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Cover Page Footnote

J.D. Candidate, 2001, Fordham University School of Law. Thanks to my family and friends for their constant support, and especially to the staff of the CAJ and my friends from Eglantine Avenue for a wonderful Summer. Thanks also to Professor Martin Flaherty for his comments and assistance.

NORTHERN IRELAND POLICING REFORM AND THE INTIMIDATION OF DEFENSE LAWYERS

Molly R. Murphy*

INTRODUCTION

In the last ten years, two criminal defense lawyers in Northern Ireland have been murdered as a result of their occupations. Patrick Finucane, a 38-year-old Belfast solicitor,¹ was murdered in front of his wife and three children on Sunday evening, February 12, 1989, when two masked gunmen entered his home and shot him fourteen times.² Rosemary Nelson, a Lurgan solicitor, died on March 15, 1999, as a result of fatal injuries that she suffered when a bomb planted under her car exploded.³ In both cases, loyalist⁴ paramilitaries claimed responsibility for the murders even though there was no evidence of paramilitary activity on the part of either attorney.⁵

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1. The legal systems in Britain and Ireland differentiate lawyers who are solicitors from lawyers who are barristers. The training for each is different, and barristers, who are retained by solicitors, may not advertise. Solicitors interview clients and draft legal documents, while barristers conduct the courtroom work.

2. See Lawyers Committee for Human Rights, Human Rights and Legal Defense in Northern Ireland 24 (1993) [hereinafter Lawyers Committee for Human Rights, Human Rights and Legal Defense].

3. See Warren Hoge, *Ulster Lawyer's Killing Casts Suspicion on Police*, N.Y. Times, May 2, 1999, at A3 [hereinafter Hoge, *Ulster Lawyer's Killing*].

4. Most loyalists/unionists in Northern Ireland are Protestant and wish to maintain their constitutional tie to Britain. Most republicans/nationalists are Catholic, and they support a union with the independent Republic of Ireland. Loyalists and republicans are at the extremes of the conflict and they will often use violence to achieve their goals. See Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 14.

5. The day after Finucane's murder, the UFF (Ulster Freedom Fighters) claimed responsibility for the murder, alleging that Finucane was a member of the PIRA (Provisional Irish Republican Army). See Martin Flaherty, *Human Rights Violations Against Defense Lawyers: The Case of Northern Ireland*, 7 Harv. Hum. Rts. J. 87, 87 (1994) [hereinafter Flaherty, *Human Rights Violations*]. Police later rejected the UFF's claim, stating that Finucane was simply conducting his professional duties. See *id.* The Red Hand Defenders, a dissident loyalist paramilitary group, claimed responsibility for Rosemary Nelson's murder. See Liam Clarke, *Who Killed Rosemary?*, Sunday Times (London), Apr. 25, 1999, at 9, available in 1999 WL 14488431; *Nelson Bomb Suspect Arrested in America: Lawyer's Family Attacks DPP's*

The Finucane and Nelson cases represent the gravest examples of the harassment of defense lawyers in Northern Ireland. Finucane's murder became "a symbol of the official intimidation and harassment endured by defense lawyers involved in politically sensitive cases," and Nelson's murder "chilling[ly] echoe[d]" it ten years later.⁶ Both Nelson and Finucane were successful human rights defenders who represented individuals detained under Northern Ireland's emergency laws.⁷ Both attorneys were allegedly intimidated by police forces prior to their deaths, and both had received death threats.⁸ In each murder, questions of collusion between the police force, the Royal Ulster Constabulary (RUC), and the responsible paramilitaries have been raised.⁹ In fact, the international community has called for

Ruling over Police 'Collusion', Observer, Jan. 9, 2000, at 2, available in 2000 WL 7006171 [hereinafter *Nelson Bomb Suspect Arrested*]. However, the Red Hand Defenders likely had help from the Ulster Defence Association (UDA), the only loyalist group with the capability to build such a sophisticated bomb. See *Nelson Bomb Suspect Arrested*, *supra*. According to Nelson's clients, police told them that the disfigurement on one side of her face had been caused by an IRA bomb that detonated while she was carrying it, when it in fact resulted from an ineffective operation to remove a birthmark. See Hoge, *Ulster Lawyer's Killing*, *supra* note 3.

6. Lawyers Committee for Human Rights, *Lawyer to Lawyer Network Action Update Northern Ireland: Rosemary Nelson* (May 1999) <<http://www.lchr.org/12/nelson0599.htm>> [hereinafter Lawyers Committee for Human Rights, *Lawyer to Lawyer Network: Rosemary Nelson*].

7. Since its creation in 1922, emergency laws have been in effect in Northern Ireland as an attempt to address problems associated with political violence and to combat terrorism on both sides of the conflict. See *infra* Parts I.A.2, I.A.3. These laws give the police broad powers of arrest and interrogation. See *infra* Part I.A.3. They also mandate non-jury trials for terrorist suspects, limit the suspect's right to silence, and extend the suspect's detention period without allowing access to a lawyer. See *infra* Part I.A.3. The emergency system creates an environment in which confessions are heavily relied upon, and they are often obtained through these extended detention periods. See *infra* Parts I.A.2, I.A.3.

One of Rosemary Nelson's clients was Colin Duffy, a man prosecuted four times since 1989, who spent nearly five years in police custody without the charges ultimately being proved. See Fiona Doherty, *Rosemary's Work*, Just News (Bull. Comm. on Admin. of Just., Belfast, Northern Ireland), Mar. 1999, vol. 14, no. 3, at 6, 6. Nelson also represented the family of Robert Hamill, a man allegedly beaten to death in front of police officers who were sitting in a land rover twenty feet away and who failed to intervene. See *id.* Arguably, Nelson was most well-known for her representation of the Catholic Garvaghy Road residents in Portadown, who wanted their rights protected when Protestants marched through their neighborhood during the annual parades celebrating Protestant rule. See *id.*

Patrick Finucane had several high-profile cases, and was well known for his practice in criminal defense and human rights. See Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 42, 43. Finucane represented Bobby Sands, the first prisoner to die in the highly publicized Maze Prison hunger strikes in which those convicted of paramilitary activity demanded political prisoner status. See *id.* at 43. Finucane also helped establish civil claims against the RUC in the form of tort actions for assault and false imprisonment. See *id.* In addition, Finucane "lodged the first successful habeas corpus action in which a detention was held to be unlawful when the police mistreated the detainee." *Id.* at 44.

8. See discussion *infra* Part I.B.1.

9. See discussion *infra* Part I.B.3.

independent inquiries into both murders, in which the RUC would not have responsibility for conducting the investigations.¹⁰

Both cases also illustrate the dangers that solicitors face in doing their jobs under the current emergency laws. Persons detained under Northern Ireland's terrorist legislation meet first with solicitors, who "advise clients against self-incrimination, protect [] them against ill-treatment, and investigate for exculpatory evidence."¹¹ As a result, solicitors are immediately placed in direct contact with members of security forces who often resent the lawyers for making it more difficult to incarcerate terrorist suspects.¹² Additionally, the client's cause is often mistakenly assumed to be the lawyer's, which results in part from the attitudes of legislators and police.¹³

The emergency regime in effect in Northern Ireland since 1922 "give[s] the RUC extraordinary police powers"¹⁴ to "stop, question, and search people without any suspicion of criminal activity" and to arrest with minimal information or suspicion.¹⁵ The RUC has not been impartial throughout the conflict, but instead has served as a "key player."¹⁶ Criticisms of the RUC include over-militarization, unrepresentativeness of the community amongst its members, lack of accountability for wrongdoing, mistreatment of detainees in holding centers, complaints of harassment by the police, and allegations of police collusion with loyalist paramilitary groups.¹⁷ Since its establishment in 1922, the composition of the RUC has been disproportionately Protestant/unionist, and it plays an important role in the Government's "counter-terrorist" policy.¹⁸ In short, the RUC does not enjoy widespread support from the Northern Irish

10. See Hoge, *Ulster Lawyer's Killing*, *supra* note 3 (stating that "[t]he United Nations, the European Parliament and concerned American members of Congress have joined the legal and rights organizations in calling for an independent investigation into the deaths"). In fact, the United States House of Representatives voted to withdraw funding for joint RUC/FBI training until there are independent inquiries into both murders. See Peter McVerry, *Congress Seeks to Cut RUC/FBI Links*, *Belfast Telegraph*, Apr. 21, 1999, at 8; *FBI Training of RUC Officers is Suspended*, *Irish Times*, July 23, 1999, at 8; see also Joe Carroll, *US Call for Nelson Murder Inquiry*, *Irish Times*, Apr. 21, 1999, at 11 (stating that the House of Representatives voted to ban the FBI from holding RUC training courses until an independent inquiry is set up).

11. Lawyers Committee for Human Rights, *Human Rights and Legal Defense*, *supra* note 2, at 25.

12. See Flaherty, *Human Rights Violations*, *supra* note 5, at 88.

13. See *id.*; *infra* notes 97-99 and accompanying text.

14. Human Rights Watch/Helsinki, *To Serve Without Favor: Policing, Human Rights, and Accountability in Northern Ireland* 16 (1997) [hereinafter *Human Rights Watch, To Serve Without Favor*]; see also *infra* Part I.A.2 for a more detailed discussion of the emergency legislation.

15. Human Rights Watch, *To Serve Without Favor*, *supra* note 14, at 18.

16. Linda Moore, *Policing and Change in Northern Ireland: The Centrality of Human Rights*, 22 *Fordham Int'l L.J.* 1577, 1579 (1999).

17. See *id.* at 1579-81.

18. *Id.* at 1578.

community.

On April 10, 1998, the historic Agreement Reached in the Multi-Party Negotiations ("Agreement") came into effect, offering a "new beginning" for the relationship between the British and Irish governments.¹⁹ The Agreement established the Independent Commission on Policing for Northern Ireland ("Policing Commission") to make recommendations for future policing structures in Northern Ireland, with the goal of creating widespread community support for those arrangements.²⁰ The Policing Commission published its highly anticipated recommendations on September 9, 1999, in the Report of the Independent Commission on Policing in Northern Ireland ("Policing Report" or "Patten Report").²¹ The Policing Report advocates a human rights-based approach to policing and promotes significant changes in such areas as accountability, policing with the community,²² composition of the police service, and training, but the Report lacks specific provisions addressing the problems confronting defense lawyers.²³

This Note will discuss the role of the police in Northern Ireland in the context of the intimidation of defense lawyers, and will examine whether the implementation of the Policing Commission's recommendations will mitigate this problem. Part I discusses the background of the conflict in Northern Ireland, including the role of the police and the defense attorney under emergency legislation. Part I also examines international standards specifically pertaining to defense lawyers. Part II analyzes the Policing Report, including the composition and organization of the Policing Commission and its findings. Part III argues that implementation of the Policing Report's recommendations may help alleviate the problem of intimidation, but

19. See Agreement Reached in the Multi-Party Negotiations, Apr. 10, 1998, at Declaration of Support [hereinafter Agreement]. This accord is also known as the "Belfast Agreement" or the "Good Friday Agreement." The Agreement, which 71% of the voters in Northern Ireland approved in a May 22, 1998, referendum, and representatives of the major political parties in Northern Ireland approved on April 10, provides that Northern Ireland will remain part of the United Kingdom unless a majority of its citizens decide otherwise. See U.S. Dep't of State, 106th Cong., United Kingdom Country Report on Human Rights Practices for 1998, in 2 Country Reports on Human Rights Practice for 1998, at 1593 (1999) [hereinafter U.S. Dep't of State, UK Country Report]. Parliament gave the Agreement legislative form in the Northern Ireland Act of 1998. See *id.*

20. See Agreement, *supra* note 19, at Policing and Justice, Annex A.

21. See generally Independent Commission on Policing for Northern Ireland, A New Beginning: Policing in Northern Ireland, chs. 3-20 (1999) [hereinafter Policing Report] (discussing findings of the Policing Commission and recommendations for changes in policing).

22. The Commission defines this as "the police participating in the community and responding to the needs of that community, and the community participating in its own policing and supporting the police." *Id.* ¶ 7.2.

23. See generally Policing Report, *supra* note 21 (presenting the Commission's findings regarding policing and its recommendations for changes in the service).

that the recommendations do not go far enough. It contends that the Policing Commission should have specifically recommended that Northern Ireland's emergency legislation be repealed, because the emergency laws create a culture in which the abuse of solicitors is an accepted practice. Part III concludes that the intimidation problem should have been specifically addressed instead of ignored by the Commission, because it ranks as a significant policing problem in Northern Ireland.

I. THE NORTHERN IRISH CONFLICT AND THE LEGAL FRAMEWORK

It is impossible to address the issues of policing and the role of defense lawyers in Northern Ireland without examining the background of the conflict and Northern Ireland's legal system. This part provides a brief historical overview of Northern Ireland, a description of the emergency law system, and specifically, of police powers under that system. It also describes abuses that defense lawyers face and the mechanisms currently in place that lawyers can use to report those abuses. Additionally, it discusses existing international standards pertaining to defense lawyers and analyzes those standards in the context of defense lawyers in Northern Ireland.

A. *The Emergency Laws of Northern Ireland as a Response to the Conflict*

1. Historical Background of the Conflict

After World War I, the Irish Republican Army ("IRA") engaged in a violent campaign for independence from Great Britain, causing Parliament to believe that Irish sovereignty would be in the best interests of Great Britain.²⁴ The Protestant minority opposed Irish autonomy, and the island was ultimately divided into two parts.²⁵ Twenty-six predominantly Catholic counties became independent under the British Commonwealth as the Irish Free State, which later created a constitution and left the Commonwealth to ultimately become the Republic of Ireland in 1949.²⁶ The other six counties, which were part of the northern province of Ulster, became Northern Ireland, a self-governing unit within the United Kingdom.²⁷

24. See generally J. Bowyer Bell, *The Irish Troubles: A Generation of Violence, 1967-1992* (1993) (providing an overview of the Northern Irish political conflict); see also Lawyers Committee for Human Rights, *Human Rights and Legal Defense*, *supra* note 2, at 13.

25. See Lawyers Committee for Human Rights, *Human Rights and Legal Defense*, *supra* note 2, at 13.

26. See *id.* at 13-14; Bell, *supra* note 24, at 26.

27. See Lawyers Committee for Human Rights, *Human Rights and Legal Defense*, *supra* note 2, at 14. These six counties remained dependent as part of the United Kingdom, but could govern themselves in areas concerning specific domestic

From the start, the Northern Ireland Parliament was dominated by a Protestant majority, and Catholics became increasingly frustrated as they experienced discrimination in employment, housing, education, and voting rights.²⁸ In the late 1960s, some Catholics participated in peaceful civil rights demonstrations while others joined the IRA to achieve through violence their goal of uniting with Ireland.²⁹ As some unionists responded violently to both methods, paramilitary activity on both sides of the conflict grew, and in 1969, the British army was called in and has since remained.³⁰ Because of the rising death toll, the government of the United Kingdom first suspended the Northern Ireland Parliament in 1972 and then later abolished it, imposing a system of direct rule.³¹

As a result of the ratification of the Agreement and recent strides toward peace in Northern Ireland, on December 1, 1999, Queen Elizabeth approved legislation transferring powers to the new Northern Ireland Assembly, creating the first government directly accountable to the people of Northern Ireland in nearly twenty-five years.³² However, Northern Ireland's self-government was suspended on February 11, 2000, because of a conflict over dismantling

matters. See Carol Daugherty Rasnic, *Northern Ireland's Criminal Trials Without Jury: The Diplock Experiment*, 5 Ann. Surv. Int'l & Comp. L. 239, 240-41 (1999).

28. See Peter G. Eikenberry, et al., *Northern Ireland: A Report to the Association of the Bar of the City of New York from a Mission of the Committee on International Human Rights*, at 4 (June 1999) [hereinafter Bar Report]; see also Flaherty, *Human Rights Violations*, *supra* note 5, at 93-94; Lawyers Committee for Human Rights, *Human Rights and Legal Defense*, *supra* note 2, at 14-15.

29. See Lawyers Committee for Human Rights, *Human Rights and Legal Defense*, *supra* note 2, at 15.

30. See *id.*

31. See Bar Report, *supra* note 28, at 4-5; Flaherty, *Human Rights Violations*, *supra* note 5, at 93-94; Lawyers Committee for Human Rights, *Human Rights & Legal Defense*, *supra* note 2, at 16. Under this system, Northern Ireland holds seats in the British Parliament in Westminster, and most legislation occurs through Orders in Council, which the Commons and Lords must approve before referral to the Queen for final approval. See Lawyers Committee for Human Rights, *Human Rights and Legal Defense*, *supra* note 2, at 16. Parliament can also enact statutes directly binding on Northern Ireland. See *id.* In terms of executive authority, the Secretary of State for Northern Ireland serves in the British Cabinet and manages the Northern Ireland Office (NIO), and is also responsible for security policy. See *id.* However, the Chief Constable of the RUC runs security operations and answers not to the Government but to the law and the courts. See *id.* The emergency laws are direct Acts of Parliament. See *id.* at 17. Therefore, the United Kingdom government controls Northern Ireland through the Northern Ireland Office, headed by the Secretary of State. See Brice Dickson, *The Legal System of Northern Ireland* 5 (3d ed. 1993) [hereinafter Dickson, *The Legal System*].

32. See *Giant Step Toward Peace Says Blair*, Irish Times on the Web: Breaking News (Dec. 1, 1999) <<http://www.ireland.com/newspaper/breaking/1999/1201/break15.htm>>. With this transfer, the Northern Ireland Assembly has the power to enact legislation regarding local affairs. The Assembly is comprised of both Protestant and Catholic representatives, as embodied in the Agreement. See Warren Hoge, *Northern Ireland Picks Up the Reins of its Government*, N.Y. Times, Dec. 3, 1999, at A1.

paramilitary arms.³³ Recent hopes for peace remain cautious due to previous broken ceasefires and post-Agreement acts of violence.³⁴ Presently, approximately 55% of the population in Northern Ireland is Protestant, and 45% is Catholic.³⁵ While there have been fewer political killings since 1972, hundreds of people a year continue to be injured because of the security situation.³⁶ Since the start of the "Troubles," the numbers in the security forces have significantly increased. Currently, the RUC has approximately 13,000 officers, with a regular force of 8500, a Full Time Reserve of 2900, and a Part Time Reserve of 1300, in addition to 3000 full-time equivalent civilians.³⁷ This is a large police service for a population of 1.675 million people.³⁸

2. The Emergency Law System

To address the problem of political violence, emergency legislation has been in effect since Northern Ireland's creation in 1922. The Northern Ireland (Emergency Provisions) Act ("EPA") applies only to Northern Ireland, and it succeeds the Civil Authorities (Special Powers) Acts (Northern Ireland) 1922-33.³⁹ The EPA 1996, as amended by the EPA 1998, is the most current law in a series of amended versions to the original 1973 EPA.⁴⁰ The Prevention of

33. See Warren Hoge, *Britain Suspends Self-Government in North Ireland*, N.Y. Times, Feb. 12, 2000, at A1.

34. See Irish Times on the Web, *The Long Road to the Talks Table* (visited Mar. 27, 2000) <http://www.ireland.com/special/peace/troubles/troubles_chron.htm> (documenting a chronology of events from 1991 to 1997). In 1994, both sides of the conflict declared a ceasefire, which the IRA broke in 1996. See *id.* The ceasefire has since been reinstated. See *id.* However, on August 15, 1998, an IRA bomb exploded in Omagh, ultimately killing 29 people. See James F. Clarity, *Bomb in Ulster, Exploding Among Shoppers, Kills 28*, N.Y. Times, Aug. 16, 1998, at A1 (stating that "[t]he blast raised fears for the survival of the Northern Ireland peace agreement"); James F. Clarity, *Ulster Buries Bomb Victims, Fearful for Peace Accord*, N.Y. Times, Aug. 20, 1998, at A8.

35. See Rasnic, *supra* note 27, at 241.

36. Injuries typically result from bombs or paramilitary-style attacks. One hundred and two people were already injured in January and February of 2000. See RUC, *Injuries as a Result of the Northern Ireland Security Situation 1968-1998* (visited Mar. 27, 2000). <<http://www.ruc.police.uk/press/statistics/injury2.htm>>

37. See Policing Report, *supra* note 21, ¶ 13.1.

38. See *id.*

39. See Northern Ireland (Emergency Provisions) Act, 1996, ch. 22, § 64 (Eng.); Civil Authorities (Special Powers) Act (Northern Ireland), 1922, 12 & 13 Geo. 5, ch. 5 (N. Ir.) (replacing the Restoration of Order in Ireland Act, 1920, 10 & 11 Geo. 5, ch. 31 (Eng.) and becoming permanent in 1933); see also Dickson, *The Legal System*, *supra* note 31, at 162-63. For a current, comprehensive discussion of Northern Ireland's emergency laws, see Fionnuala Ni Aolain, *The Fortification of an Emergency Regime*, 59 Alb. L. Rev. 1353 (1996) (discussing the application of the emergency laws during the cease-fire period).

40. See Northern Ireland (Emergency Provisions) Act, 1996, ch. 22, § 59 (Eng.); see also Dickson, *The Legal System*, *supra* note 31, at 162; Human Rights Watch, *To Serve Without Favor*, *supra* note 14, at 16.

Terrorism (Temporary Provisions) Act 1989 ("PTA") contains comparable provisions to the EPA, and it applies to the entire United Kingdom.⁴¹ Parliament considers renewing the Acts on an annual basis, and it recently extended both Acts.⁴² Although ordinary criminal laws are in effect via the 1989 Police and Criminal Evidence (Northern Ireland) Order ("PACE"),⁴³ the Government does not believe they are capable of effectively addressing terrorism, and thus emergency legislation is thought necessary to "strengthen" those laws.⁴⁴

Together, the EPA and PTA extend police powers beyond ordinary bounds while limiting the rights of terrorist suspects. In 1970, a Parliamentary Commission headed by Lord Diplock recommended that juryless trials before a single judge would alleviate some of the problems arising from the violence in Northern Ireland.⁴⁵ These recommendations were promulgated into statute in 1973,⁴⁶ leading to the repeal of the Special Powers Act and the passage of the EPA.⁴⁷ Thus, when a charge relates to terrorism, the defendant is "scheduled" for a Diplock non-jury trial.⁴⁸ Additionally, the EPA "empowers the police to stop and question individuals regarding identity and recent movements and further authorizes the search of persons and

41. See Prevention of Terrorism (Temporary Provisions) Act, 1989, ch. 4 (Eng.).

42. See *id.*; Northern Ireland (Emergency Provisions) Act, 1998, ch. 9 (Eng.); see also Dickson, *The Legal System*, *supra* note 31, at 162-63. Periodically, the Government sponsors reviews of the EPA and PTA to "consider the future need for specific counter-terrorism legislation in the United Kingdom if the cessation of terrorism connected with the affairs of Northern Ireland leads to a lasting peace." Human Rights Watch, *To Serve Without Favor*, *supra* note 14, at 16-17 (quoting Rt. Hon. Lord Lloyd of Berwick, *Inquiry into Legislation Against Terrorism* (London: HMSO, Oct. 1996), p.v.). The Government appoints an independent reviewer to report annually to Parliament on the use of the emergency powers during the previous year. See Northern Ireland Office, *Law & Order: Counter-Terrorism Legislation* (last modified Apr. 1998) <<http://www.nio.gov.uk/coterleg0498.htm>> [hereinafter NIO, *Counter-Terrorism Legislation*].

43. PACE applies to non-scheduled offenses and provides for a fairer, more traditional criminal procedural code than that provided by the EPA or the PTA, thus ensuring greater protection for defendants. See Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 18-19; Symposium, *The Police and Criminal Evidence (Northern Ireland) Order 1989*, 40 N. Ir. Legal Q. 319, 319-21 (1989) (providing a detailed description of PACE).

44. See NIO, *Counter-Terrorism Legislation*, *supra* note 42 (stating that "the EPA provides the criminal justice system and the police and Army in Northern Ireland with the provisions they need to be effective against terrorism"); see also Bar Report, *supra* note 28, at 8.

45. See Rasnic, *supra* note 27, at 243 & n.14. According to the Northern Ireland Office, juryless trials are "necessary to safeguard the judicial process against the risks of jury intimidation and the returning of perverse verdicts." NIO, *Counter-Terrorism Legislation*, *supra* note 42.

46. See Rasnic, *supra* note 27, at 243 n.14.

47. See Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 18.

48. See Northern Ireland (Emergency Provisions) Act, 1996, ch. 22, § 1 (Eng.); Rasnic, *supra* note 27, at 245.

residences, as well as examination and seizure of documents, all without prior judicial approval.”⁴⁹ The PTA allows authorities to, among other things, “arrest, detain, and interrogate individuals for up to seven days without an appearance before a magistrate.”⁵⁰

Periodically, the Government will review the EPA and the PTA as an accountability measure, and will examine whether the emergency provisions are still needed.⁵¹ Some reviewers have recommended steps toward dismantling the emergency regime,⁵² but in the past the Government apparently believed that the laws could not be repealed until peace was established.⁵³ Arguably, with the ratification of the Agreement, peace now exists. In December 1998, the United Kingdom Home Office and the Northern Ireland Office⁵⁴ called for the repeal of the PTA and the EPA, which did not ultimately occur,⁵⁵ but also warned that they would introduce temporary emergency provisions if terrorist activity reoccurs.⁵⁶

The EPA and the PTA create a system in which convictions are sought based on “confessions obtained through extended periods of detention and interrogation.”⁵⁷ In maintaining this system, the United Kingdom on several occasions has derogated from international human rights undertakings.⁵⁸ In November of 1998, the United

49. Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 18.

50. *Id.*

51. *See supra* note 42.

52. *See* Human Rights Watch, To Serve Without Favor, *supra* note 14, at 16-17 (referring to Lord Lloyd’s recommendations in Oct. 1996).

53. *See id.* at 17.

54. *See supra* note 31 for further explanation of the Northern Ireland Office.

55. *See supra* note 42 and accompanying text.

56. *See* Bar Report, *supra* note 28, at 7-8 (referring to 1998 White Paper entitled “Legislation Against Terrorism”). Some of the suggested measures include a continuation of Diplock courts, bail restrictions, lower standards for admitting confessions into evidence, and incorporating the current PTA provisions that allow police to hold a suspect for up to 48 hours without access to a solicitor into ordinary, non-emergency law. *See id.* at 8 & nn.14-17.

57. Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 17.

58. The United Kingdom entered derogations under the International Covenant on Civil and Political Rights (ICCPR) on December 23, 1988, and May 17, 1976, and under the European Convention on Human Rights (ECHR) on December 23, 1988, December 18, 1978, December 12, 1975, September 19, 1975, August 16, 1973, January 23, 1973, August 20, 1971, September 25, 1969, and June 27, 1957. *See id.* at 17 n.11. Under Article 4.1 of the ICCPR, to which the United Kingdom is a party, a state may derogate from its obligations “[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed.” International Covenant on Civil and Political Rights, *opened for signature*, Dec. 19, 1966, 999 U.N.T.S. 171. The European Court of Human Rights found that the United Kingdom’s seven-day detention period violated Article 5(3) of the ECHR, which requires that detainees be brought before a court “promptly.” *See* Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 5(3), 213 U.N.T.S. 222, 6 I.L.M. 368 (1967); *Brogan and Others v. United Kingdom*, 1989 Y.B. Eur. Conv. on H.R. 160 (Eur. Ct. H.R.). Rather than repealing the legislation, the

Kingdom government passed the Human Rights Act 1998,⁵⁹ which incorporates the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention") into the United Kingdom's domestic law.⁶⁰ Courts in the United Kingdom may not void a parliamentary act, but may determine whether both proposed terrorism legislation and existing statutes and criminal practices are compatible with the Convention.⁶¹ United Kingdom courts will therefore be more active in "insuring compliance with international human rights standards."⁶²

3. Police Powers of Arrest, Detention, and Interrogation and Their Effects on the Role of the Defense Attorney

Terrorist suspects are treated differently under the emergency system than other detainees are under the ordinary criminal law. The police are given far broader powers of arrest, detention, and interrogation with respect to terrorist suspects. Under section 14 of the PTA, the police may arrest without a warrant "any person whom they reasonably suspect to be guilty of certain specified offences or of being concerned in the commission, preparation or instigation of acts of terrorism."⁶³ Under section 18 of the EPA, an officer may arrest without warrant "any person who[m the officer] has reasonable grounds to suspect is committing, has committed or is about to commit a scheduled offence or an offence under this Act which is not a scheduled offence."⁶⁴ The arrest powers under the EPA are rarely invoked because the PTA grants police broader powers to arrest based on extremely limited suspicion or information.⁶⁵ Statistics suggest that the RUC abuses its arrest powers. In 1998, of the 566 persons arrested under the PTA, only 131 (23%) were charged with an offense.⁶⁶ Perhaps these suspects simply did not supply enough

Government derogated under the ICCPR, and evidence suggests that it derogated not out of necessity for its use but rather in response to an adverse court decision. *See* Lawyers Committee for Human Rights, *At the Crossroads: Human Rights and the Northern Ireland Peace Process* 11 & n.16 (1996) [hereinafter *Lawyers Committee for Human Rights, At the Crossroads*] (stating that the European Court recognized that the *Brogan* decision may have prompted the derogation).

59. *See* Human Rights Act, 1998, ch. 42 (Eng.).

60. *See* U.S. Dep't of State, UK Country Report, *supra* note 19.

61. *See* Bar Report, *supra* note 28, at 9.

62. *Id.*

63. Dickson, *The Legal System*, *supra* note 31, at 163. This law arguably violates Article 5.1 of the European Convention on Human Rights, under which reasonable suspicion is necessary to make an arrest. Mere "concern" does not constitute an offense under United Kingdom law. *See* Bar Report, *supra* note 28, at 10.

64. Northern Ireland (Emergency Provisions) Act, 1996, ch. 22, § 18 (Eng.).

65. *See* Human Rights Watch, *To Serve Without Favor*, *supra* note 14, at 17-18.

66. *See* Bar Report, *supra* note 28, at 12 (citing Sir Louis Blom-Cooper, Sixth Annual (1998) Report of the Independent Commissioner for the Holding Centres (Mar. 31, 1999)).

evidence that the police could rely upon to support a charge, but evidence suggests that police use their arrest powers as harassment techniques or for reasons other than criminal investigation.⁶⁷

Under section 14 of the PTA, police may detain a suspect for up to forty-eight hours and the Secretary of State may extend this period for up to five days.⁶⁸ Roughly one-third of those arrested under the PTA are held beyond the forty-eight-hour period.⁶⁹ At no time must the officer justify the detention to a judicial officer.⁷⁰ In legislation proposed in 1998,⁷¹ the Government suggested that judicial authorization by an independent commission of judges and magistrates be necessary to extend the detention period beyond the initial forty-eight hours.⁷² Under this proposed legislation, however, the detainee still would not have access to legal intervention for the first forty-eight hours because under the PTA the police have the power to deny the detainee access to a solicitor during that period.⁷³ Furthermore, police can continue to deny access to a solicitor for another forty-eight hours under section 47(8) of the EPA,⁷⁴ and even after access to a solicitor is granted, the solicitor still cannot be present during interrogation.⁷⁵

These provisions create a system in which police officers, acting on minimal suspicion, have the power to arrest and freely interrogate suspects with little supervision. Confessions are heavily relied upon in Northern Ireland's criminal justice system, which makes it crucial to ensure that police are not improperly obtaining confessions and that legal standards are strict enough to exclude unreliable confessions.⁷⁶ For traditional, non-scheduled⁷⁷ offenses, a confession is admissible if the prosecution proves beyond a reasonable doubt that the statement was not obtained by "oppression or in consequence of anything said

67. See Human Rights Watch, *Human Rights in Northern Ireland* 14 (1991) (describing the experiences of three prisoners who were arrested several times and released without charge, after being subjected to long periods of interrogation, threats, abuse, and efforts to convince them to become informers); see also Lawyers Committee for Human Rights, *At the Crossroads*, *supra* note 58, at 8 (describing interviews of arrested detainees who said that their interviews focused on general issues such as the peace process rather than questions about specific offenses).

68. See Dickson, *The Legal System*, *supra* note 31, at 164. The Secretary of State nearly always grants the request for extension, and in 1998 all 125 requests were granted. See Bar Report, *supra* note 28, at 13.

69. See Dickson, *The Legal System*, *supra* note 31, at 164.

70. See Bar Report, *supra* note 28, at 12-13.

71. See *supra* notes 54-56 and accompanying text.

72. See Bar Report, *supra* note 28, at 14.

73. See Dickson, *The Legal System*, *supra* note 31, at 164.

74. See Bar Report, *supra* note 28, at 15 (citing EPA § 47(8)).

75. See Dickson, *The Legal System*, *supra* note 31, at 164.

76. See Human Rights Watch, *Human Rights in Northern Ireland*, *supra* note 67, at 30-31.

77. Non-scheduled offenses are non-terrorist offenses, where the suspect receives a jury trial. See *supra* note 48 and accompanying text.

or done which was likely to render it unreliable.”⁷⁸ For scheduled terrorist offenses, however, a statement is currently admissible unless the defendant produces prima facie evidence of coercive techniques used by the police, specifically, that he or she was subjected to “‘torture, to inhuman or degrading treatment, or to any violence or threat of violence (whether or not amounting to torture), in order to induce [an accused] to make the statement.’”⁷⁹ The burden then shifts to the prosecution to disprove the defense beyond a reasonable doubt.⁸⁰ Under this standard, “physical deprivation or psychological pressure short of outright violence is permissible.”⁸¹ Hence, the prosecution is rarely prevented from admitting involuntary confessions, for the defendant faces significant problems in obtaining evidence of coercion “in a setting where the only others present are the ones who would have the opportunity and incentive to coerce the confession in the first place.”⁸²

The modification of ordinary criminal law also restricts terrorist suspects’ right to silence, which “helps the authorities gain convictions by relying on negative inferences of what a defendant did not say rather than on affirmative evidence of what a defendant did say.”⁸³ Under the Criminal Evidence (Northern Ireland) Order 1988, prosecutors, judges, and juries may infer guilt from a detainee’s silence.⁸⁴ The inference alone is not sufficient for conviction, but it can be used to corroborate other evidence implicating the accused.⁸⁵ Once again, legal counsel is of paramount importance here because most detainees will not know the consequences of speaking or remaining silent.⁸⁶

Recent developments provide some hope for increased protection of detainees’ rights. In May 1999, audio recording of police interviews

78. Dickson, *The Legal System*, *supra* note 31, at 138 (citing article 74 of the PACE Order 1989).

79. Human Rights Watch, *To Serve Without Favor*, *supra* note 14, at 23 (quoting section 12(2)(b) of the EPA) (alteration in original); *see also* Rasnic, *supra* note 27, at 248 (stating that “[t]he common law rule that a confession is admissible evidence only if it was voluntarily made has been substantially modified under the Diplock system”).

80. *See* Dickson, *The Legal System*, *supra* note 31, at 165.

81. Lawyers Committee for Human Rights, *At the Crossroads*, *supra* note 58, at 121.

82. *Id.*

83. *Id.* at 120.

84. *See* Criminal Evidence (Northern Ireland) Order 1988, art. 3 (No. Ir.); Dickson, *The Legal System*, *supra* note 31, at 136. This restriction on the right to silence was extended to the rest of the United Kingdom under section 34 of the Criminal Justice and Public Order Act 1994. *See* Lawyers Committee for Human Rights, *At the Crossroads*, *supra* note 58, at 35-36.

85. *See* Dickson, *The Legal System*, *supra* note 31, at 136.

86. *See* Lawyers Committee for Human Rights, *At the Crossroads*, *supra* note 58, at 120.

was introduced for the first time,⁸⁷ which will help ensure that the interview process is carried out fairly and will make it easier for a detainee to establish prima facie evidence of coercion. Although not a substitute for a solicitor's presence, the tape recording provides a mechanism by which the accuracy of interviews can be checked, and will discourage police from treating detainees inappropriately. Additionally, the Government's 1998 proposed legislation would repeal the provisions of the EPA that forbid a solicitor from seeing a client for another forty-eight hours after the initial detention period and from being present at an interview.⁸⁸ As long as the emergency laws are in place, however, a culture exists in which police have the liberty to do virtually whatever it takes to incarcerate a suspect, even if they are abusing the detainee's rights in the process.

B. *Abuses of Defense Lawyers Under the Emergency System*

There are approximately 1700 solicitors in Northern Ireland, a small number of whom work on politically sensitive cases.⁸⁹ It is virtually impossible for defense lawyers to collaborate by sharing information or assisting one another because they work in several different firms that do not have close connections.⁹⁰ Solicitors who represent criminal defendants also face resentment from police and civil solicitors because Northern Ireland has a progressive system in which the Government will pay for any criminal defense lawyer of the client's choosing.⁹¹ Religion aggravates the situation because most criminal defense lawyers are Catholic, while the police force is overwhelmingly Protestant.⁹² Police maintain an "us versus them" attitude even though Catholic and Protestant lawyers represent both loyalist and republican detainees with the same intensity.⁹³

87. See Northern Ireland (Emergency Provisions) Act, 1996, ch. 22, § 53A (Code of Practice) (Eng.). The Code applies to persons arrested under certain sections of the PTA as well as specific cases designated by the Secretary of State. See *id.* The RUC resisted audio recording of interrogations because it argued that audio recording would make it easier for terrorists to find out whether detainees had become informers. See Lawyers Committee for Human Rights, *At the Crossroads*, *supra* note 58, at 124.

88. See Bar Report, *supra* note 28, at 15-16.

89. See *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, Mr. Param Kumaraswamy, U.N. ESCOR Comm. on Human Rights, 54th Sess., ¶ 32, U.N. Doc. E/CN.4/1998/39/Add.4 (1998) [hereinafter *Report of the Special Rapporteur*].

90. See *id.* ¶ 33; Flaherty, *Human Rights Violations*, *supra* note 5, at 97 ("Since solicitors' firms in Northern Ireland rarely exceed three or four partners, decentralization and disorganization results. Defense practitioners are spread out among seven or eight firms, none of which are in close contact.").

91. See *id.* at 97 n.45 (citing interviews with three criminal defense solicitors in Northern Ireland).

92. See *id.* at 97; Rasnic, *supra* note 27, at 251 (stating that only 8% of the police force is Catholic).

93. See Flaherty, *Human Rights Violations*, *supra* note 5, at 97 (stating that "no

These hostile attitudes toward defense solicitors are maintained and exacerbated by the emergency law and criminal justice systems, which combine to create an environment ripe for the harassment of defense lawyers. Prolonged detention, easy admissibility of confessions, and effective elimination of the right to silence result in "a system that gives the security forces every incentive to rely on confessions obtained in custody and, in turn, to impede solicitors who are often the only significant hurdle in the race to obtain convictions."⁹⁴ The more effectively these lawyers act as "hurdles," the more they are subjected to intimidation and harassment by officials.⁹⁵ A 1992 Lawyers Committee for Human Rights mission found that almost every lawyer who represented detainees under the emergency laws had been the victim of some form of official intimidation.⁹⁶

The public assertions of government officials identifying lawyers with their clients' causes also create great concern because such statements may encourage police officers engaging in abuses.⁹⁷ For example, three weeks before Patrick Finucane's murder, Douglas Hogg, a Home Office Minister, stated in Parliament that "[t]here are in Northern Ireland a number of solicitors who are unduly sympathetic to the cause of the IRA."⁹⁸ Officials have also publicly speculated that money paid to solicitors helps to finance terrorist causes.⁹⁹

Defense lawyers are intimidated in several ways. Among the most common allegations of harassment are death threats and interference with the attorney/client relationship and the right to counsel of choice. Credible evidence also suggests that police and paramilitary forces may collude to intimidate lawyers from taking on criminal defense cases.¹⁰⁰ Solicitors rarely file formal complaints about harassment,

evidence has ever been presented to prove that lawyers in Northern Ireland discriminate between clients on the basis of religion").

94. Lawyers Committee for Human Rights, *At the Crossroads*, *supra* note 58, at 116.

95. See Flaherty, *Human Rights Violations*, *supra* note 5, at 98.

96. See Lawyers Committee for Human Rights, *Human Rights and Legal Defense*, *supra* note 2, at 27. A follow-up mission in June 1995 found a decline in the reported instances of harassment of lawyers, but this decline was not the result of reforms by the authorities but of a reduction in emergency detentions and custodial interrogations during the 1994-1996 ceasefires. The solicitors and detainees interviewed stressed that the same patterns of abuse continued to occur in detentions that took place during the ceasefires. See Lawyers Committee for Human Rights, *At the Crossroads*, *supra* note 58, at 89, 98-101.

97. See Flaherty, *Human Rights Violations*, *supra* note 5, at 100.

98. Human Rights Watch, *Human Rights in Northern Ireland*, *supra* note 67, at 101.

99. See, e.g., Lawyers Committee for Human Rights, *Human Rights and Legal Defense*, *supra* note 2, at 33-36 (noting statements made by Ken Maginnis, an Ulster Unionist MP, and Lord Colville, a reviewer appointed by the Government to assess the security situation in Northern Ireland).

100. See *infra* Part I.B.3. for a description of this evidence.

however, because they believe that the current complaints system is futile and ineffective.¹⁰¹ The following sections illustrate the types of defense attorney harassment that the emergency laws and criminal justice system propagate and reinforce.

1. Death Threats

Death threats are the most severe form of intimidation that defense lawyers in Northern Ireland experience. Almost every solicitor interviewed by the Lawyers Committee during a 1992 mission related stories of death threats.¹⁰² Many threats occur in detention centers, where an officer may make a threatening remark about a detainee's solicitor to the detainee.¹⁰³ In one alleged instance, interrogators threatened the clients of a solicitor and the solicitor himself, and the clients were later killed.¹⁰⁴ Additionally, anonymous threats are made via telephone or in writing.¹⁰⁵ Solicitors began taking death threats much more seriously after Patrick Finucane's murder, particularly when the threats made reference to Finucane.¹⁰⁶ Finucane himself experienced death threats, which became more serious and persistent in the year before his death.¹⁰⁷

Rosemary Nelson also received death threats through her clients before she was killed.¹⁰⁸ In September 1998, she testified before the

101. See *infra* Part I.B.4.

102. See Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 27-29. These pages describe threats received by solicitors and their clients in detail. For example, one detainee interviewed by the Lawyers Committee for Human Rights described the response of interrogators when she asked for Madden & Finucane, a public interest firm established in 1979 by Peter Madden and Patrick Finucane, as counsel. One of the interrogators said that Patrick Finucane had ended up in a body bag and that another solicitor at Madden & Finucane "would end up the same way." *Id.* (quoting Lawyers Committee for Human Rights interview of Geraldine O'Connor, Sept. 3, 1992.) Even since Nelson's death, two solicitors told the Lawyers Committee for Human Rights that several RUC officers have threatened them. See Vincent Kearney, *RUC Officers Have Threatened Solicitors, Say US Investigators*, Sunday Times (London), Nov. 21, 1999, at 5, available in 1999 WL 30048300. In addition, a study by the Geneva-based International Commission of Jurists found that more lawyers in Northern Ireland were the victims of death threats and harassment than in any other part of the European Union. See Robert Verkaik, *Ulster is Worst for Threats to Lawyers*, Independent (London), Apr. 12, 1999, at 6.

103. See Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 26-27.

104. See *id.* at 27.

105. See, e.g., *id.* at 31-32 (giving examples of anonymous threats).

106. See *id.* at 27; *supra* text accompanying notes 1-6 for a description of Finucane's case.

107. See Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 49-50 (describing in detail the threats Finucane received).

108. See Human Rights Watch, *To Serve Without Favor*, *supra* note 14, at 173-75 (describing in detail threats that Nelson received); *supra* text accompanying notes 3-6 for a description of Nelson's case. Nelson also received anonymous written death threats that the Committee on the Administration of Justice (CAJ) forwarded to Northern Ireland's Security Minister, Adam Ingram, in the summer of 1998. See Clare

International Operations and Human Rights Subcommittee of the U.S. House of Representatives' International Relations Committee and described the difficulties she experienced with the RUC.¹⁰⁹ Nelson stated that "[t]hese difficulties have involved RUC officers questioning my professional integrity, making allegations that I am a member of a paramilitary group and, at their most serious, making threats against my personal safety, including death threats."¹¹⁰

2. Interference with Attorney/Client Relations and Choice of Counsel

In addition to allegations of death threats, other allegations suggest that police attempt either to create a barrier between solicitor and client, or to frighten suspects away from choosing a particular solicitor.¹¹¹ Although less serious than death threats, this kind of interference is more common.¹¹² Comments made by police to detainees may take the form of slander against a solicitor's competence or accusations of IRA involvement.¹¹³ One solicitor told

Murphy, *Flanagan Asked to Explain Claim that RUC Did Not Know of Threats to Murdered Lawyer*, Irish Times, May 27, 1999, at 8. In a letter to the CAJ, Ingram indicated that the threats had been passed on to the RUC for investigation. *See id.* However, shortly before Nelson's murder in 1999, the Chief Constable indicated that the RUC did not have information suggesting Nelson was "the subject of a specific terrorist threat." *Id.* (quoting Sir Ronnie Flanagan). After the murder, Flanagan stated that "[w]e [the RUC] as an organization, had no intelligence whatever to substantiate a specific threat to Rosemary Nelson's life prior to her dreadful murder." *60 Minutes: RUC* (CBS television broadcast, Nov. 21, 1999, at 17) [hereinafter *60 Minutes*] (transcript on file with *Fordham Law Review*).

109. *See* Rosemary Nelson, Statement to the US Congressional Subcommittee on International Operations and Human Rights, (Sept. 29, 1998), *reprinted in* Just News (Committee on the Administration of Justice, Belfast, Northern Ireland), Mar. 1999, vol. 14, no. 3, at 7 [hereinafter Nelson, *Congressional Testimony*]; *see also* David McKittrick, *Ulster Lawyers 'Threatened by RUC'*, Independent (London), Mar. 21, 1999, at 7 (stating that "[t]he striking thing" about Nelson's allegation of threats "is not that it was unusual but rather the opposite: it was so familiar as to be a matter almost of routine in certain legal circles").

110. Nelson, *Congressional Testimony*, *supra* note 109. Recently, the DPP decided not to take action against the RUC officers who allegedly threatened Nelson. *See* Gerry Moriarty, *DPP Ruling on Alleged Nelson Death Threats Angers Family*, Irish Times, Jan. 10, 2000, at 7. One nationalist said, "What other outcome could be expected when the RUC were investigating death threats which had allegedly been made by their own officers?" *Nationalist Anger at 'Whitewash Operation'*, Irish Times, Jan. 10, 2000, at 7.

111. *See* Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 29-31.

112. *See id.* For a detailed list of threats, verbal abuse, and derogatory remarks made by the RUC about solicitors at police stations from 1989-1991, *see* Human Rights Watch, Human Rights in Northern Ireland, *supra* note 67, at 179-92. Detention centers (or "holding centres") are the sites of most lawyers' allegations of abuse. *See* Lawyers Committee for Human Rights, At the Crossroads, *supra* note 58, at 94.

113. *See* Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 29.

the Lawyers Committee that all of his clients had heard these kinds of comments.¹¹⁴ Another reported that police would tell clients that their solicitors did not care about them personally and only wanted to make money from their representation.¹¹⁵ These comments occur so frequently that many clients do not even tell their solicitors about them, but those who do, corroborate the solicitors' allegations.¹¹⁶

Some police statements attempt to interfere with the attorney/client relationship by intimidating clients into changing their mind about their choice of solicitor. Several clients of one solicitor stated that when they chose Madden & Finucane¹¹⁷ for representation, the police charged that the detainee must be a member of the IRA.¹¹⁸ This kind of allegation can cause detainees to choose another lawyer so as not to appear to be affiliated with the IRA. In addition, comments like these scare Protestants away from choosing particular solicitors when the police criticize them for their choice of a Catholic solicitor.¹¹⁹

3. Collusion

Perhaps even more disturbing than the evidence of harassment of defense lawyers by the RUC is the evidence of collusion between police and paramilitary organizations. Collusion can take the form of directly conspiring with a terrorist group, failing to prevent a violent act for which there was reliable advance notice, or failing to investigate terrorist acts in order to find the responsible party.¹²⁰ Because the RUC investigates cases involving paramilitary violence, allegations of collusion may arise, particularly when loyalist paramilitary organizations obtain official information.¹²¹ According to the RUC Chief Constable, there have been very few cases of officers supplying official information and those cases have been "dealt with."¹²² However, no charge of collusion against an officer has ever been acknowledged.¹²³ The RUC also contends that if collusion does occur, it is not institutionalized but rather is the result of some "bad apple[s]" on the force.¹²⁴ The RUC seems to be "conceding that it

114. *See id.* (quoting an interview with an Omagh solicitor).

115. *See id.* at 30.

116. *See id.* (describing remarks heard by detainees about their solicitors reported to the Lawyers Committee for Human Rights).

117. *See supra* note 102.

118. *See* Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 31.

119. *See id.* (describing an instance in which a Protestant detainee chose a Catholic solicitor and was rebuked by the police for choosing "a murdering Provo bastard").

120. For other examples of collusion in this setting, see Human Rights Watch, *To Serve Without Favor*, *supra* note 14, at 140.

121. *See id.* at 141.

122. *Id.* (quoting RUC Chief Constable Ronnie Flanagan from a Nov. 11, 1996, interview).

123. *See id.*

124. *Id.* (citing Paddy Hillyard, "The Politics of Policing and Policing Itself: The

cannot exercise sufficient control over all [of] its officers and security procedures while, at the same time, it disclaims any responsibility for the loyalist killings of members of the minority Catholic community, be they nationalist, republican, or indifferent, due to that lack of control."¹²⁵

However, in a 1993 report, the Lawyers Committee for Human Rights presented credible evidence of official collusion by both the British Army and the RUC in Patrick Finucane's murder.¹²⁶ A follow-up report in 1996 indicated that there had been no prosecutions in the murder, the RUC had not interviewed murder witness Geraldine Finucane, nor had the RUC interviewed any of Patrick Finucane's colleagues about evidence of collusion.¹²⁷ Thus, there was reason to

Stalker Affair," Paper presented at an international conference on "Policing the Peace," University College Galway, Aug. 23-25, 1995, p.11).

125. *Id.* at 142.

126. See Lawyers Committee for Human Rights, Human Rights and Legal Defense, *supra* note 2, at 52-57 (providing a detailed account of the evidence). The LCHR gathered information from a fact-finding mission to Northern Ireland during which they interviewed solicitors, barristers, former detainees, journalists, government officials, police officials, and human rights activists. See *id.* at iii-v. The names of certain sources were kept confidential either at their request or out of safety concerns. See *id.* The RUC criticized the report's allegations as being unsubstantiated, but the LCHR received no assistance from the RUC during its mission. See *id.* There was arguably enough evidence to substantiate an independent inquiry into the murder. See *id.* In addition, several human rights groups have documented cases that suggest collusion and have called on the British government to address the issue, but apparently have received no effective response. See Human Rights Watch, To Serve Without Favor, *supra* note 14, at 143 & n.348.

127. See Lawyers Committee for Human Rights, At the Crossroads, *supra* note 58, at 111-12. London Metropolitan Police Deputy Commissioner John Stevens conducted two inquiries, in 1990 and 1995, examining allegations of collusion between security forces and loyalist paramilitaries. See Lawyers Committee for Human Rights, Northern Ireland Update 4 (1999) [hereinafter Lawyers Committee for Human Rights, Northern Ireland Update]. The first inquiry ended in the prosecution of 59 members of loyalist paramilitaries but not in a prosecution for Finucane's murder. See Lawyers Committee for Human Rights, At the Crossroads, *supra* note 58, at 109. In regard to the second investigation, Stevens indicated that he could not comment, but that any information he turned up would have been given to the RUC and the Director of Public Prosecutions. See *id.* at 110. The results of both inquiries were kept confidential, and the extent of the investigations remains unclear. See *id.* at 111; Lawyers Committee for Human Rights, Northern Ireland Update, *supra*, at 4. Another inquiry into Finucane's murder, overseen by Stevens, was begun in April 1999 as a result of new evidence regarding official collusion, and Stevens recently said there has been "good progress to date, but six to nine months' intensive work still needs to be done." *Finucane Inquiry to 'Take Another Six Months,'* Irish Times on the Web: Breaking News (Dec. 1, 1999) <<http://www.ireland.com/newspaper/breaking/1999/1201/break13.htm>>; see also David McKittrick, *British Security Services 'Colluded with Loyalists' in Ulster Murders*, Independent (London), May 4, 1999, at 1 (providing a description of the new evidence of collusion); British Irish Rights Watch, *Justice Delayed: Alleged State Collusion in the Murder of Patrick Finucane and Others*, ¶¶ 1.2, 1.3 (Feb. 2000) <<http://www.fhit.org/birw/justice.html>> (describing a confidential report that British Irish Rights Watch delivered to the British and Irish governments and the United Nations in February 1999, detailing evidence of collusion in Patrick Finucane's murder and noting that the British government has not denied

suspect the RUC's denials of collusion in the murder.

In June 1999, William Stobie, an informer for the RUC Special Branch, was arrested for Finucane's murder.¹²⁸ Stobie claims that he turned over paramilitary information regarding Finucane's planned murder to the police before the attack, but they failed to prevent it.¹²⁹ He also claims that he gave the police detailed information about the movements of the murderers' weapons, but they again did not act.¹³⁰ In addition, Stobie had been previously arrested for possession of illegal arms found in his home.¹³¹ When the possession matter went to trial, Stobie allegedly threatened to publicly expose his knowledge about Finucane's murder, which was communicated to a DPP representative.¹³² Shortly thereafter, the trial was aborted due to a police officer's "elementary" procedural mistake during testimony.¹³³ Stobie also claims that, at the time of the possession trial, his lawyers told a DPP representative that he was a police informer, resulting in the abortion of the case and no formal offer of evidence by the DPP against Stobie.¹³⁴ Moreover, recent news reports indicate that Stobie had been arrested and questioned about the murder in September 1990. At that time, Stobie confessed to his role in the murder, but was released from custody when the DPP decided not to prosecute.¹³⁵

Certain facts suggest that police may have been involved in Rosemary Nelson's murder as well. In addition to allegedly receiving death threats from the RUC,¹³⁶ Nelson had an unusually high security presence outside of her house the night before the bomb went off, leading some to wonder how the attackers planted the bomb.¹³⁷ Immediately after the murder, the RUC Chief Constable announced the involvement of the Chief Constable of Kent and the FBI in the

any of the allegations).

128. See David McKittrick, 'RUC Informer Killed Finucane,' Independent (London), June 25, 1999, at 4 [hereinafter McKittrick, *RUC Informer*].

129. See *id.* The accused, Mr. William Stobie, pleaded not guilty, and his response to the charge was read in Belfast Magistrate's Court: "'At the time I was a police informer for Special Branch and on the night of the death of Pat Finucane I informed Special Branch on two occasions by telephone that a person was to be shot.'" *Id.* Stobie claimed he did not know who was to be shot. See *id.*

130. See Committee on the Administration of Justice, notes taken at Stobie Bail Application hearing, Aug. 3, 1999 (on file with *Fordham Law Review*).

131. See Committee on the Administration of Justice, Additional Submission to the Criminal Justice Review (Oct. 1999).

132. See *id.*

133. *Id.*

134. See *id.*

135. See *id.*; see also McKittrick, *RUC Informer*, *supra* note 128 (stating that Stobie's solicitor told the court that the police and the DPP likely had access to the information about the murder for some time).

136. See *supra* notes 108-10 and accompanying text.

137. See Clarke, *supra* note 5 (explaining further the possibility that an officer or soldier could have alerted the bombers to Nelson's presence, and that her car was parked in the driveway).

Nelson investigation, giving the inquiry "added independence."¹³⁸ However, the FBI had no authority to investigate, could not issue search warrants, and its role in the investigation concluded only a few months after the murder.¹³⁹ Currently, the Norfolk Deputy Chief Constable heads the investigation with a team of both English and RUC officers.¹⁴⁰ The RUC officers reportedly are not investigating the collusion allegations.¹⁴¹ However, because the Deputy Chief Constable must still report directly to the RUC Chief Constable, and the investigators from outside Northern Ireland work out of the RUC station in Nelson's home town, those with information may be less inclined to come forward.¹⁴²

The circumstances surrounding Finucane's and Nelson's deaths have led many human rights organizations to call for independent inquiries into both murders.¹⁴³ The lack of substantive inquiry by the RUC into either murder illustrates the serious need for a separate, independent mechanism to identify the guilty and hold them accountable.

4. Complaints

Many defense solicitors do not lodge harassment complaints because they have little faith that their complaints will be handled effectively.¹⁴⁴ The role of the Independent Commission for Police

138. David McKittrick, *RUC Acts to Quell Collusion Rumours*, Independent (London), Mar. 17, 1999, at 6; see also Toby Harnden, *RUC Calls in Kent Police and FBI*, Daily Telegraph (London), Mar. 17, 1999, at 1 (announcing that Nelson's murder investigation would be conducted by the Kent police with the assistance of the FBI).

139. See Joe Carroll, *FBI's Role in Nelson Inquiry Has Concluded—Spokesman*, Irish Times, May 24, 1999, at 7; Rachel Donnelly, *FBI No Longer Active in Nelson Murder Inquiry*, Irish Times, May 27, 1999, at 8. Recently, a suspect was arrested in the United States to be questioned about Nelson's murder. See *Nelson Bomb Suspect Arrested*, *supra* note 5.

140. See Lawyers Committee for Human Rights, Northern Ireland Update, *supra* note 127, at 6.

141. See *id.*

142. See *id.* (explaining that people with information that would be potentially useful to the investigation may not come forward because of the apparent RUC involvement in the investigation). Recently, the investigating force arrested a loyalist paramilitary member and former British soldier, who was not charged with Nelson's murder but was arraigned on weapons charges. See Warren Hoge, *Northern Ireland: Ex-Soldier Held*, N.Y. Times, Mar. 18, 2000, at A5.

143. See Clare Murphy, *Call for New Nelson Inquiry*, Irish Times, Dec. 11, 1999, at 8; Lawyers Committee for Human Rights, For an Independent Inquiry into the Killing of a Human Rights Defender, Rosemary Nelson, Joint Statement by Amnesty International, British/Irish Rights Watch, Committee on the Administration of Justice, Human Rights Watch, Center for the Independence of Judges and Lawyers of the International Commission of Jurists, Lawyers Committee for Human Rights (Dec. 10, 1999) <<http://www.lchr.org/n.ireland/nijoint.htm>> [hereinafter Lawyers Committee for Human Rights, Joint Statement].

144. See Flaherty, *Human Rights Violations*, *supra* note 5, at 102; see also McKittrick, *Ulster Lawyers 'Threatened by RUC'*, *supra* note 109 (stating that only a

Complaints ("ICPC")¹⁴⁵ is merely to supervise the investigation of complaints, while the police have the role of actual investigation.¹⁴⁶ The ICPC can impose certain requirements regarding how the investigation is conducted, but is never directly involved in the investigation itself.¹⁴⁷ Therefore, the police are effectively left alone to investigate themselves.

Upon completion of a complaint investigation, the investigating RUC officer sends a report to the ICPC and a copy to the Chief Constable.¹⁴⁸ The supervising officer at the ICPC determines whether the investigation has been satisfactorily conducted and submits a statement to both the Chief Constable and the complainant.¹⁴⁹ The Chief Constable then decides whether the report indicates that an officer has committed an offense, and if so, the Chief Constable must send a copy of the report to the Director of Public Prosecutions (DPP), who decides whether to prosecute.¹⁵⁰ In an exceptional case, the DPP may independently bring criminal charges against an officer even though the ICPC has not issued a statement, but the investigation is still conducted by the RUC.¹⁵¹ Arguably, the RUC will not attempt to investigate its own officers as thoroughly as it would another party. Because only the RUC has the power to investigate,¹⁵² one can understand why solicitors have little faith in this system.

The complainant can do little to initiate criminal proceedings if the investigator's report is not sent to the DPP or if the DPP decides not to prosecute.¹⁵³ The complainant can request that the DPP reconsider prosecution, but the DPP legally does not have to give reasons for his or her decisions, and rarely does so, which makes it "virtually impossible to mount a legal challenge."¹⁵⁴

few solicitors have voiced complaints but there have been allegations for more than a decade).

145. See The Independent Commission for Police Complaints for Northern Ireland, *Quis Custodiet Ipsos Custodes? The Independent Commission for Police Complaints for Northern Ireland*, 39 N. Ir. Legal Q. 185, 185-88 (1988) (describing procedures of the ICPC).

146. See Brice Dickson, *Complaints Against the Police*, in *Civil Liberties in Northern Ireland: The C.A.J. Handbook* 80, 83-86 (Brice Dickson ed., 3d ed. 1997) (providing a detailed description of the complaints process and the involvement of the ICPC).

147. For example, the ICPC can require that "the investigation be provided with additional staff and resources, that particular persons be interviewed or that certain forensic evidence be sought." *Id.* at 85.

148. See *id.*

149. See *id.*

150. See *id.* at 86.

151. See *id.*

152. See *id.* at 83.

153. See *id.* at 87.

154. *Id.* Even through judicial review, the complainant would have to show "very convincing evidence of a criminal offence" before a judge would overrule the DPP's

The RUC is 92% Protestant and is itself victimized by paramilitary attacks.¹⁵⁵ Many solicitors, therefore, are understandably skeptical about the quality of a police investigation into a complaint that appears to come from the Catholic/nationalist side of the conflict.¹⁵⁶ Moreover, the RUC simply does not handle the complaints effectively. Several solicitors told the Lawyers Committee that the complaints they lodged went nowhere.¹⁵⁷ Even though an independent mechanism exists in the ICPC, it never becomes directly involved in the process of the investigation,¹⁵⁸ and statistics show that very few officers are disciplined despite the high number of cases (brought both by the general public and solicitors) that come before the ICPC.¹⁵⁹

Rosemary Nelson lodged complaints against the RUC, alleging that she was both verbally and physically abused by the police on several occasions.¹⁶⁰ The Supervising Member of the ICPC made an unprecedented move when she concluded that the RUC's investigation into the complaints was unsatisfactory.¹⁶¹ A Commander

decision. *Id.* A private prosecution is expensive, and the DPP may still overtake and terminate private prosecutions. *See id.*

155. Nearly 9000 police officers have been wounded in the last 30 years, mostly by the IRA, and more than 300 have been killed. *See 60 Minutes, supra* note 108, at 14-15.

156. *See Flaherty, Human Rights Violations, supra* note 5, at 104.

157. *See Lawyers Committee for Human Rights, Human Rights and Legal Defense, supra* note 2, at 40.

158. *See Dickson, supra* note 146, at 84.

159. In 1992, the substantiation rate for complaints in Northern Ireland was 4.3%, while in England and Wales it was 27.9%. *See Brice Dickson & Robert Millar, Complaints Against the Police, in Civil Liberties in Northern Ireland: The C.A.J. Handbook* 76, 89 (Brice Dickson ed., 2d ed. 1993). From 1989-1992, 16.9% of cases the ICPC considered came from people arrested under the EPA or PTA. *See id.* at 90. Of those cases, 56.5% alleged assault during an interview by police, and another 5.3% alleged assault before arriving at the station. *See id.* Not one of these complaints was substantiated by the ICPC. The reasons given for this were the complainant's refusal to cooperate with the investigation and "insufficient evidence." *Id.*

The situation does not appear to be improving. From 1997 to 1999, 5293 complaints against the police were referred to the ICPC, only 61 of which were substantiated. *See RUC, Complaint Statistics: Table 3* (initially recorded 1997/98, and 1998/99) <<http://www.ruc.police.uk/press/statistics/complaints.htm>>. Of these, 1997 were complaints of assault, and 6 were substantiated. *See id.* Of the 544 "oppressive conduct/harassment" complaints, none were substantiated. *Id.*

160. *See Nelson, Congressional Testimony, supra* note 109.

161. *See Kieran McEvoy, Chronology of Events*, Just News, (Bull. Comm. on Admin. of Just., Belfast, Northern Ireland), Mar. 1999, vol. 14, no.3, at 2-3. In a summary of the ICPC report that was publicly released, the Supervising Member criticized "RUC hostility to Rosemary, lack of professionalism including one officer who turned up 45 minutes late for a meeting smelling of alcohol, officers being assisted in the preparation of their statements by the investigating chief inspector who also made judgements as to the moral character of Rosemary Nelson" and an overall borderline obstructive mindset. *Id.* In response, the RUC has attempted to personalize the report by focusing on its author, calling her conclusions "subjective." Lawyers Committee for Human Rights, Joint Statement, *supra* note 143; Clare

of the Metropolitan Police (not an RUC officer) undertook a second investigation and issued a review of the RUC's handling of the original investigation, concluding that there was insufficient evidence to prosecute any officer.¹⁶² However, in a private report, the ICPC Chairperson criticized the Metropolitan Police for not conducting a thorough or impartial review.¹⁶³ The DPP ultimately decided not to take action against any RUC officers.¹⁶⁴ Rosemary Nelson's case illustrates the need for an accountable independent official to inquire officially into police misconduct.

C. *International Standards Regarding the Role of Attorneys*

Lawyers around the world face abuses similar to those in Northern Ireland. As a result, the international community has developed standards that governments are expected to abide by to ensure that the rights of their citizens are protected. Several international human rights standards specifically address the position lawyers hold in society, and highlight the importance of lawyers being able to do their job effectively.¹⁶⁵ Furthermore, these standards create a structure for the protection of lawyers in society. The United Nations Basic Principles on the Role of Lawyers,¹⁶⁶ the Declaration on Human Rights Defenders,¹⁶⁷ and the 1998 Report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers¹⁶⁸ are examples of the attention that the international community has focused on this problem.

The United Nations Basic Principles on the Role of Lawyers¹⁶⁹ resulted from a coordinated effort to create "international standards for the independence of the bench and bar."¹⁷⁰ The Basic Principles

Murphy, *Commission Reports Rising Trend in RUC Complaints*, Irish Times, Mar. 19, 1999, at 9.

162. See Kearney, *supra* note 102. In the published summary, matters related to disciplinary or criminal breaches by the RUC were omitted. See McEvoy, *supra* note 161.

163. See Lawyers Committee for Human Rights, Joint Statement, *supra* note 143.

164. See Moriarty, *supra* note 110.

165. See generally The United Nations Basic Principles on the Role of Lawyers, U.N. GAOR, 45th Sess., 8th Cong. on Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/Conf. 144/2B (1990) [hereinafter Basic Principles] (discussing the role of lawyers and guarantees for their functioning in the arena of international human rights law); Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, U.N. GAOR, 53rd Sess., U.N. Doc. A/RES/53/144 (1998) [hereinafter Declaration on Human Rights Defenders] (recognizing the responsibility of individuals, groups and associations to protect human rights).

166. See Basic Principles, *supra* note 165.

167. See Declaration on Human Rights Defenders, *supra* note 165.

168. See Report of the Special Rapporteur, *supra* note 89.

169. See Basic Principles, *supra* note 165.

170. Martin S. Flaherty, *Interrogation, Legal Advice, and Human Rights in*

are not a legally binding international treaty, but they do reveal a consensus on the part of the international community.¹⁷¹ In addition, they arguably also operate as a source of customary international law, which means that the standard results from "a general and consistent practice of states followed by them from a sense of legal obligation."¹⁷² Many nations have adopted codes governing lawyers' conduct to ensure that they are able to represent clients effectively.¹⁷³ The Basic Principles themselves encourage a sense of legal obligation by stating that governments should respect and consider the Principles "within the framework of their national legislation and practice."¹⁷⁴

The Basic Principles address many issues, including access to lawyers and legal services (1-4), qualifications and training (9-11), duties and responsibilities (12-15), freedom of expression and association (23), professional associations (24-25), and disciplinary proceedings (26-29).¹⁷⁵ In addition, the Principles discuss special safeguards in criminal justice matters. They provide that governments should ensure that detainees are informed about their right to a lawyer of their own choice upon arrest or detention,¹⁷⁶ that they be provided with adequate opportunities to communicate with a lawyer in full confidentiality,¹⁷⁷ and that they be given prompt access to a lawyer not later than forty-eight hours from the time of arrest.¹⁷⁸

Significantly, one section of the Basic Principles addresses guarantees for the safe and effective functioning of lawyers. Principle 16(a) states, "Governments shall ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference. . . ."¹⁷⁹ Furthermore, "[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities"¹⁸⁰ and "[l]awyers shall not be identified with their

Northern Ireland, 27 Colum. Hum. Rts. L. Rev. 1, 13 (1995) [hereinafter Flaherty, *Interrogation in Northern Ireland*] (citing Reed Brody, *Introduction to The Centre for the Independence of Judges and Lawyers, The Independence of Judges and Lawyers: A Compilation of International Standards 3-13* (Reed Brody ed., 1990)); *Human Rights Violations*, *supra* note 5, at 91.

171. See Flaherty, *Interrogation in Northern Ireland*, *supra* note 170, at 14.

172. Restatement (Third) of the Foreign Relations Law of the United States § 102(2) (1987). These constitute the two requirements a standard must meet to be a source of customary international law—"generality" and *opinio juris*. See *id.* at cmts. b & c.

173. For examples of such codes, including those in New York, England and Wales, and China, and for constitutional provisions showing a commitment to effective counsel, see Flaherty, *Human Rights Violations*, *supra* note 5, at 90 & n.10.

174. Basic Principles, *supra* note 165, Preamble.

175. See *id.*

176. See *id.* ¶ 5.

177. See *id.* ¶ 8.

178. See *id.* ¶ 7.

179. *Id.* ¶ 16(a).

180. *Id.* ¶ 17.

clients or their clients' causes as a result of discharging their functions."¹⁸¹ Evidence of the present situation of lawyers in Northern Ireland strongly suggests that the Government is in violation of these principles.

In 1998, the United Nations adopted the Declaration on Human Rights Defenders as a response to the need for recognition of human rights defenders whose rights are often violated by governments.¹⁸² Similar to the Basic Principles, the Declaration is not a legally binding treaty, but indicates agreement within the international community and arguably is evidence of customary international law. The Declaration states generally that everyone has the right to strive for protection of human rights (Article 1), and that the State should ensure that the rights in the Declaration are guaranteed (Article 2(2)).¹⁸³ Furthermore, individuals have a right to be protected in the event of violations of these rights, to complain, and to have an independent review of their complaint (Article 9). The Declaration indicates that the State shall conduct the independent investigation where a violation is believed to have occurred (Article (5)), and it shall create independent national institutions to protect human rights, such as ombudsmen or human rights commissions (Article 14(3)). The Declaration on Human Rights Defenders provides an example of the international scrutiny and importance bestowed on the role of human rights defenders, including criminal defense lawyers, in safeguarding citizens' procedural rights.

Pursuant to a 1994 Commission on Human Rights resolution,¹⁸⁴ the United Nations Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, undertook a fact-finding mission to Northern Ireland in October 1997.¹⁸⁵ His primary purpose was to investigate the reports of systematic abuse of defense lawyers in Northern Ireland by police, and to examine provisions, such as the emergency laws, that raised concerns of restriction of access to legal advice.¹⁸⁶ As stated in his mission report, Cumaraswamy found that "the RUC has engaged in activities which constitute intimidation, hindrance, harassment, or improper interference" and expressed particular concern that police had identified solicitors with their clients' causes.¹⁸⁷ When voicing his concerns, the Special Rapporteur directly mentioned that several of the United Nations Basic Principles

181. *Id.* ¶ 18.

182. *See* Declaration on Human Rights Defenders, *supra* note 165.

183. *See id.*

184. *See Report of the Special Rapporteur, supra* note 89, ¶ 1.

185. In the course of his mission, the Special Rapporteur visited detention centers, met with government representatives, police, non-governmental organizations, solicitors, and barristers who provided testimony of their harassment. *See id.* ¶¶ 7-9.

186. *See id.* ¶¶ 5(a), (b) & 6.

187. *Id.* ¶ 90.

on the Role of Lawyers were potentially being violated.¹⁸⁸

As a result, the Special Rapporteur made a number of recommendations, including that an independent investigation into threats of legal counsel be conducted, that the Government provide necessary protection to lawyers and investigate threats, that lawyers lodge formal complaints with authorities, and that the RUC organize training seminars for police that would address the role defense lawyers play in the justice system.¹⁸⁹ The Special Rapporteur further urged the Government to conduct an immediate independent judicial inquiry into Patrick Finucane's murder.¹⁹⁰ In addressing the emergency legislation, the Special Rapporteur advocated reinstatement of the right to silence and the right to trial by jury, and urged that implementation of the ordinary criminal law be given priority.¹⁹¹

As these standards and findings indicate, the international community has recognized the need to protect lawyers and their clients from official abuses, and they legitimize the theory that, as a matter of customary international law, the British government has a responsibility to provide safeguards to solicitors and to encourage effective legal representation. The next part focuses on the Independent Commission on Policing and its recent Report aimed at assessing policing problems in Northern Ireland and suggesting solutions. Significantly changing the way the police currently operate in Northern Ireland could potentially alter the situation for defense lawyers, because many of the problems lawyers face stem directly from policing practices. The next part presents the contents of the Policing Report to provide a context for analyzing whether the Policing Commission's proposals can positively change the environment of intimidation for defense lawyers in Northern Ireland.

II. THE INDEPENDENT COMMISSION ON POLICING IN NORTHERN IRELAND AND ITS FINDINGS

The Independent Commission on Policing for Northern Ireland ("Policing Commission") was established under the April 10, 1998, Agreement.¹⁹² Its purpose was to review policing and to make recommendations regarding future policing structures and arrangements in Northern Ireland.¹⁹³ On September 9, 1999, the Policing Commission published its report, which includes recommendations for a human rights-based approach to policing, mechanisms to increase police accountability, and suggestions for

188. *See id.* ¶¶ 23-25, 41-42, 45, 52, 73-74.

189. *See id.* ¶ 91.

190. *See id.* ¶ 95.

191. *See id.* ¶ 95 (a), (b) & (c).

192. *See Agreement, supra* note 19, at Policing and Justice, ¶ 3.

193. *See id.* at Annex A.

changing the composition of the force to make it more representative of the community.¹⁹⁴ This part describes the organization and operation of the Policing Commission, and presents its findings and recommendations in addition to some criticisms of those proposals.

A. *The Operation and Organization of the Policing Commission*

1. Why was the Commission Organized?

The preamble to the Agreement lists its main purposes, one of which is “commitment to exclusively democratic and peaceful means of resolving differences on political issues, and [] opposition to any use or threat of force by others for any political purpose.”¹⁹⁵ As part of this transition to a peaceful society, the Policing Commission was created under the Agreement to recommend ways in which the police force could be changed to increase community support for policing.¹⁹⁶ In the introduction to its Report, the Policing Commission states that “policing is at the heart of many of the problems that politicians have been unable to resolve in Northern Ireland.”¹⁹⁷ Indeed, Northern Ireland’s divided society puts pressure on the police, whose responses to the conflict have heightened tensions rather than abated them.¹⁹⁸ The historic religious and political disproportionality of the police force causes identification of police with the state, affecting the “sense of security and identity of both communities” and undermining the effectiveness of police enforcement.¹⁹⁹ Addressing and debating these controversial topics is a key step toward ultimately achieving the “democratic and peaceful” aims of the Agreement.

The violence of the last thirty years created a police force that operates out of highly fortified stations resembling military buildings, whose members drive armored vehicles and at times of extreme conflict, wear flak jackets, drive land rovers, and are accompanied by armed soldiers.²⁰⁰ Police officers face incredible dangers on the job, and over 300 officers have been killed since the Troubles began, while thousands more have been injured or psychologically scarred.²⁰¹ Police officers fear that certain geographical areas are traps in which paramilitaries will ambush them when they are called in for aid.²⁰² As a result, police admittedly do not carry out “normal” policing in all

194. See generally Policing Report, *supra* note 21, at ch. 20 (summarizing recommendations).

195. Agreement, *supra* note 19, at Declaration of Support, ¶ 4.

196. See *id.* at Strand One, Annex A.

197. Policing Report, *supra* note 21, ¶ 1.2.

198. See Linda Moore, *supra* note 16, at 1578-79 (1999).

199. Policing Report, *supra* note 21, ¶ 1.3.

200. See Moore, *supra* note 16, at 1579.

201. See *supra* note 155.

202. See Human Rights Watch, *To Serve Without Favor*, *supra* note 14, at 102.

parts of the country, thereby creating barriers between the police and the community.²⁰³ The RUC argues that it wishes to be a community force,²⁰⁴ but community support is impossible when a system exists in which paramilitaries carry out justice on their own terms and when many believe that the police do little to combat it.²⁰⁵

In contrast to the current state of tension, the Agreement seeks a police force "that can enjoy widespread support from, and is seen as an integral part of, the community as a whole."²⁰⁶ The police and politics have unfortunately been linked for the last thirty years in Northern Ireland, so that the current attempts at political reform necessitate an inquiry into policing reforms.²⁰⁷ As the Policing Commission states, "If the fresh start for politics founders, it will be more difficult to make changes in policing; and if changes in policing are resisted (or mishandled) then there could be a serious impact on the attempt to rebuild democratic politics in Northern Ireland."²⁰⁸ Hence, changes in policing bear a close relationship to the success of the Agreement and the ultimate prospects for peace in Northern Ireland.

2. Tasks of the Commission

The "Policing and Justice" section of the Agreement reiterates that the Agreement provides "the opportunity for a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole."²⁰⁹ The Agreement further stresses that the police service must be impartial,

203. *See id.* One RUC source stated that attacks on police officers had resulted in police either not responding in certain areas or on occasion not responding as quickly as either they, or the public, would like. *See id.* Another source indicated that "the terrorist threat has inhibited the degree and quality of contact between the Police and the public and, at times and in places, the nature of the Police response to community needs." *Id.* at 102-03 (citing to Address of Hugh Annesley, former RUC Chief Constable, to the Armagh Diocesan Synod, Oct. 22, 1991, p. 5).

204. *See id.* at 104 (citing to Human Rights Watch/Helsinki interview with Chief Constable Ronnie Flanagan in Belfast, Nov. 24, 1996).

205. *See id.* at 102-07.

206. Agreement, *supra* note 19, at Policing and Justice, Annex A.

207. Pat Fahy, an attorney who has received threats, many allegedly from the police, stated:

There is such a level of distrust . . . that . . . cannot be overestimated among the Catholic nationalist people towards the RUC. I believe that upwards of 100 percent of Catholic people will believe that there has been collusion between the RUC and loyalist paramilitaries in the killing of Catholic people. Now, whether that's right or wrong, if that perception is held by so many people, clearly there's a very, very serious problem.

60 Minutes, *supra* note 108, at 17.

208. Policing Report, *supra* note 21, ¶ 1.7; *see also* Linda Moore, *supra* note 16, at 1581 (stating that "[f]or many, the future of the RUC remains a distillation of the Northern Ireland question, reflecting the obvious centrality of the issue to a society where the state itself has been at the center of political contention").

209. Agreement, *supra* note 19, at Policing and Justice, ¶ 1.

accountable, professional, and effective in its response to crime and terrorist threats, because anything less will fail to gain public acceptance or confidence.²¹⁰

Within this general framework, Annex A to the Agreement lays out specific tasks for the Policing Commission. Initially, the Commission was to conduct an inquiry into the present state of policing and then make its proposals regarding future policing structures and arrangements.²¹¹ Although the Commission's focus was on policing, it could draw the Government's attention to other aspects of the criminal justice system relevant to its policing work, including the role of police in prosecution.²¹² The Commission was encouraged to establish focus groups, consult non-governmental organizations, and to generally interview a broad range of people.²¹³

The Agreement also provides that the police service must operate within a "coherent and cooperative criminal justice system, which conforms with human rights norms."²¹⁴ In furtherance of this principle, a government-led Criminal Justice Review was created to propose future criminal justice arrangements other than those related to policing and emergency legislation.²¹⁵ This review was scheduled to report just after the Policing Commission, theoretically allowing the Criminal Justice Review to pick up on issues that the Policing Commission excluded. One commentator criticized the establishment of these two groups as creating an "artificial division," because many issues overlap between the Policing Commission and the Criminal Justice Commission, yet there is no mechanism in the Agreement for cooperation between the two groups.²¹⁶ The Agreement also remains vague as to whether the Policing Commission may consider the continued vitality of emergency legislation, an issue that is closely tied to policing in Northern Ireland.²¹⁷

3. The Process of the Commission and its Findings

On June 3, 1998, the Commission was established, and the Secretary of State announced its membership. Former Governor of Hong Kong

210. *See id.* ¶ 2.

211. The arrangements include composition, recruitment, training, culture, ethos and symbols, and the Commission's recommendations could also cover re-training, job placement, and educational and professional development. *See id.* at Annex A.

212. *See id.*

213. *See id.*

214. *Id.* ¶ 2.

215. *See id.* at Annex B. The Criminal Justice Review will make arrangements regarding judicial appointments, supervision of the prosecution process, measures to improve the responsibility and accountability of the criminal justice system, cooperation between north and south, and devolution of criminal justice functions to an Assembly. *See id.*

216. Moore, *supra* note 16, at 1587.

217. *See id.* at 1587-89.

Christopher Patten chaired the Commission. Of the seven remaining members of the Commission, two had experience in policing, one represented the nationalist community and one the unionist community, two were academics, and one was a senior business figure.²¹⁸ On June 11th and 12th, 1998, the Commission held its first meeting, and began by briefing itself on the background to the Agreement and the establishment of the Commission, on the present policing arrangements in Northern Ireland, on previous reports on policing in Northern Ireland, and on worldwide debates and developments concerning policing.²¹⁹ The Commission invited the public to submit their opinions on policing, and letters were sent to those with a particular interest in the subject.²²⁰ The Commission held both private and public meetings over the next several months, and held open meetings in every District Council area in Northern Ireland.²²¹

More than 10,000 people attended the public meetings and over 1000 spoke.²²² The Commission received approximately 2500 written submissions, a number of petitions signed by several thousand people, and some standardized letters, all of which were read by the Commissioners.²²³ Private meetings continued, and consultants formed eight focus groups from different citizen traditions and backgrounds for study.²²⁴ Other consultants performed a cultural audit of the police with the cooperation of the RUC.²²⁵ The

218. See Policing Report, *supra* note 21, ¶ 2.1; Moore, *supra* note 16, at 1591-92. The other members were: Dr. Maurice Hayes, Irish Senator and previously Northern Ireland Ombudsman and Permanent Secretary in the Northern Ireland Department of Health and Social Services; Dr. Gerald Lynch, President of John Jay College of Criminal Justice, New York; Kathleen O'Toole, a career police officer, previously Massachusetts Secretary for Public Safety, currently an administrator at Boston College; Prof. Clifford Shearing, Professor of Criminology and Sociology at the University of Toronto and a Professor within the School of Government at the University of the Western Cape; Sir John Smith, former Deputy Commissioner of the Metropolitan Police and a former Inspector of Constabulary; Mr. Peter Smith, QC, a barrister practicing in Northern Ireland, and Mrs. Lucy Woods, former Chief Executive of British Telecom in Northern Ireland and BT Ireland. See Policing Report, *supra* note 21, ¶ 2.1.

219. See Policing Report, *supra* note 21, ¶ 2.3.

220. See *id.* Those with a particular interest included political parties, churches, and non-governmental organizations. See *id.*

221. Paragraph 2.3 of the Policing Report describes those with whom the Commission met, which include politicians, civil liberties groups, community and youth workers, and academics. They also visited several police stations and met with individual police officers. See Annex 3 to the Policing Report, *supra* note 21, for a list of meetings conducted in November and December, when the main program of meetings was conducted.

222. See Policing Report, *supra* note 21, ¶ 2.3.

223. See *id.*

224. See *id.* The groups consisted of people from both Protestant/unionist and Catholic/nationalist communities, and included both higher and lower income groups. See *id.* ¶¶ 3.18-3.20.

225. See Policing Report, *supra* note 21, ¶ 2.3.

Commission conducted a survey of public attitudes to policing in the spring of 1999, and it visited police services in the Republic of Ireland, Great Britain, Canada, South Africa, Spain, and the United States.²²⁶ Finally, the Commission attended policing conferences, human rights conferences, and visited the Council of Europe in Strasbourg.²²⁷

To provide a basis of comparison for its own findings, the Policing Commission reviewed the findings of public opinion surveys about the RUC. Overall, the poll findings indicated a high satisfaction rate with policing in Northern Ireland.²²⁸ But surveys also showed that perceptions of policing between Protestant and Catholic communities varied greatly, which highlights the problem of policing in a divided society.²²⁹ Catholics showed a higher satisfaction rate with local police than with the performance of the police as a whole, and the opposite held true for Protestants,²³⁰ reflecting how communities feel about the RUC as an institution.²³¹ Significantly more Catholic respondents than Protestants found that the RUC treats the two communities unequally.²³² Catholic lower-class communities held the most negative view about whether the police treated people fairly in their local area, and significantly fewer Catholics in lower-working-class areas than Protestants of the same socioeconomic status thought the police treated people equally in the country as a whole.²³³ About 75% of Catholics thought there were too few Catholics in the police force, as compared with 60% of Protestants.²³⁴ Seventy percent of Catholics stated that Catholics were deterred from entering the force mainly

226. For a list of all of the police services consulted, see Annex 4 to the Policing Report, *supra* note 21.

227. *See id.* ¶ 2.3.

228. *See id.* ¶ 3.2. According to the International Crime Victimisation Survey, which covers eleven Western countries, public satisfaction with police performance was higher in Northern Ireland than all the continental European countries polled, and lower only than Canada, the United States, Scotland, and England and Wales, most of which were consulted by the Policing Commission during its investigation. *See id.* Four Omnibus Surveys carried out by the Northern Ireland Statistics and Research Agency found high approval ratings of police performance in Northern Ireland as a whole. *See id.* ¶ 3.3.

229. *See id.* ¶ 3.4. (discussing results of Omnibus Surveys showing an over 80% Protestant approval rate as compared with a 50% Catholic approval rate).

230. *See id.* ¶ 3.5.

231. *See id.* The Commission stated:

For a significant number of Protestants, support for the RUC as an institution may be expressed more strongly than satisfaction with the delivery of the local police service; while for some Catholics the local police service may be satisfactory even if they have misgivings about the wider role of the police or about the RUC as an institution.

Id.

232. *See id.* ¶ 3.7. According to Omnibus Surveys, about 70% of Protestants thought that the police treat the communities equally, as compared to 25-30% of Catholics. Both communities gave higher ratings to their local police, but there still was a significant difference between them. *See id.* ¶¶ 3.7, 3.8.

233. *See id.* ¶ 3.8 (citing a Queen's University, Belfast, survey).

234. *See id.* ¶ 3.11.

because of intimidation or fear of attack, while 30% said it was because potential Catholic members did not support the governmental system.²³⁵ About half of both communities indicated that there should be more women in the force.²³⁶

The results of the Policing Commission's public consultations were "broadly similar to findings of the earlier polls."²³⁷ In accordance with the previous surveys, the Commission's findings revealed that "beneath the moderately satisfactory overall popular approval of policing in Northern Ireland lay a sharp difference between Protestant/Unionist perceptions of the police and Catholic/Nationalist views."²³⁸ These differences were most pronounced in the public meetings, where participants expressed strong support for the RUC in meetings held in Protestant/unionist areas, strong criticism in Catholic/nationalist areas, and mixed views at mixed meetings.²³⁹

Significantly, the Policing Commission found a "commonality of interest" in policing between the Catholic/nationalist and Protestant/unionist communities as their research progressed.²⁴⁰ Majorities in both communities expressed a desire for the police to maintain order and protect their rights. To this end, citizens wanted more neighborhood patrolling, a less-militarized police force with less weaponry and smaller patrols, less-imposing police stations, and fewer armored cars.²⁴¹

Overall, the Commission heard general concerns about policing that would likely be expressed in most countries, but also found that many of the problems that police face in Northern Ireland result from the divided nature of the society. Generally, citizens of Northern Ireland believe that the police force should be more representative of the community, particularly with regard to women and Catholics on the force.²⁴² Most people were open to these types of changes in the police, in the interests of more effective and efficient policing.²⁴³

B. *Recommendations of the Policing Commission*

1. Human Rights

The Policing Report was published on September 9, 1999. In it, the Policing Commission declares that a "central proposition" of the

235. See *id.* (citing Community Attitudes Survey).

236. See *id.* ¶ 3.12 (citing 1998 Omnibus Survey).

237. *Id.* ¶ 3.13.

238. *Id.* ¶ 3.15.

239. See *id.*

240. *Id.* ¶ 3.18.

241. See *id.* ¶ 3.18.

242. See *id.* ¶ 3.23. The Commission noted that there were "differences of emphasis" on this point in different communities. *Id.*

243. See *id.* ¶ 3.22.

Report is “that the fundamental purpose of policing should be, in the words of the Agreement [of April 1998], the protection and vindication of the human rights of all.”²⁴⁴ The Commission further quotes Article 28 of the Universal Declaration of Human Rights, which reads, “everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised,”²⁴⁵ and states that the police must help achieve that social and international order.²⁴⁶ Finally, the Commission states that “[u]pholding human rights and upholding the law should be one and the same thing.”²⁴⁷

The Commission thereby places great emphasis on raising human rights awareness in police practice in Northern Ireland. The Commission found that the RUC was only beginning to consider how to address human rights issues, and only in the particular context of the Human Rights Act 1998.²⁴⁸ The RUC’s recently introduced training curriculum²⁴⁹ focuses overwhelmingly on drill and firearms training as opposed to human rights. The Policing Commission instead recommends “a comprehensive programme of action to focus policing in Northern Ireland on a human rights-based approach,” which “should be seen as the core of [the] report.”²⁵⁰ The purpose of this program is to ensure respect for human rights both technically and behaviorally. Technically, police will be less likely to use unethical methods in policing if they know the laws well and master policing skills. Behaviorally, respect for human rights should be an instinctual reaction rather than a procedural point to remember.²⁵¹

To further this human rights goal, the Commission makes specific recommendations for a new Code of Ethics that integrates the European Convention on Human Rights (ECHR) into police practice,²⁵² revamped codes of practice that are in accordance with the

244. *Id.* ¶ 4.1; *see also* Agreement, *supra* note 19, at Declaration of Support, ¶ 2 (emphasizing the same goal).

245. Policing Report, *supra* note 21, ¶ 4.1 (quoting Universal Declaration of Human Rights, Dec. 10, 1948, G.A. Res. 217A, U.N. GAOR, 3d Sess., 67th plen. mtg., art. 28(2), U.N. Doc. A/810 (1948)).

246. *See id.* ¶ 4.1.

247. *Id.* ¶ 4.3.

248. *See id.* ¶ 4.5. The rights discussed in the European Convention of Human Rights are given direct effect in United Kingdom courts via the passage of the Human Rights Act 1998, and when the Act becomes effective in the Year 2000, United Kingdom courts will more actively ensure compliance with international human rights standards. *See supra* notes 59-62 and accompanying text. Police have begun to consider the implications of the Act in specific areas that may be affected, particularly in pre-trial procedures, custody of arrested persons, covert policing, and emergency planning. *See* Policing Report, *supra* note 21, ¶ 4.5, box 1.

249. This curriculum is brand-new and was introduced in 1999. *See* Policing Report, *supra* note 21, ¶ 4.5.

250. *Id.* ¶ 4.6 (emphasis omitted).

251. *See id.* ¶ 4.13.

252. *See id.* ¶ 4.8. The Commission recommends that a good model would be the

ECHR,²⁵³ and training of police officers and civilians in the fundamental principles and standards of human rights, including the practical implications for policing.²⁵⁴ Furthermore, the Commission advocates awareness of human rights issues and respect for human rights as important elements in appraising individual performance in the police service,²⁵⁵ the appointment of a human rights lawyer to the staff of the police legal services,²⁵⁶ and monitoring by the Policing Board of the respect afforded to human rights by the police.²⁵⁷

2. Accountability

The Policing Commission argues that effective policing requires consent from the community, which will come only when the police are held accountable both in a "subordinate" sense and in a "cooperative" sense.²⁵⁸ In Northern Ireland, accountability has not occurred in either of these ways because of significant problems with democratic accountability, transparency, legal accountability, and internal accountability.²⁵⁹ The Report therefore addresses each of these issues.

In Northern Ireland, the Secretary of State both appoints members to the Police Authority, a body that monitors police performance, and has the power to remove them.²⁶⁰ The police therefore cannot be held accountable by the public through democratically elected officials. Political parties and trade unions refuse to allow their members to be appointed to the Authority and therefore exacerbate the problem of creating representative membership.²⁶¹ Further, Northern Ireland

1992 draft Code by the Association of Chief Police Officers (ACPO). *See id.* at Annex 5 (reproducing the 1992 draft of the Code of Ethics).

253. *See id.* ¶ 4.8.

254. *See id.* ¶ 4.9.

255. *See id.* ¶ 4.10.

256. *See id.* ¶ 4.11.

257. *See id.* ¶ 4.12. *See infra* notes 283-300 and accompanying text for a description of the Policing Board.

258. *See* Policing Report, *supra* note 21, ¶ 5.2. Police are subordinate in that they are employed by the community to provide a service, and they are subordinate to the law like any other citizen. In a cooperative sense, police and the community must work together and communicate in a partnership to achieve effective policing. *See id.* ¶ 5.3.

259. *See id.* ¶ 5.4. Through democratic accountability, elected representatives inform the police of what they would like from the service, and hold the police accountable for delivering their wishes. Transparency keeps the community informed and allows its members to question police actions. Legal accountability assures that the police are held to account for misuse of powers. *See id.* ¶¶ 5.4, 5.5.

260. *See id.* ¶ 5.5; *see also* Brice Dickson, *The Police Authority for Northern Ireland*, 39 N. Ir. Legal Q. 277, 277-78 (1988) [hereinafter Dickson, *The Police Authority*] (discussing necessary changes, including increased accountability, for efficient law enforcement in Northern Ireland).

261. *See* Policing Report, *supra* note 21, ¶ 5.5. Many nationalist groups refuse to nominate representatives for the Authority because they say that "they cannot nominate members for a body which, in their opinion, has not done enough to curb

police “serv[e] two masters,” which creates a tendency for police to develop a more direct relationship with the more influential one.²⁶² The Chief Constable reports to the Secretary of State for security-related policing issues, and to the Authority for ordinary crime policing.²⁶³ The Secretary of State maintains direct ties with the Chief Constable, has influence through the appointment of the Police Authority, and also determines the budget.²⁶⁴ The Secretary of State must answer to Parliament as a democratically elected minister, but he or she is never a Northern Ireland political party member and therefore is not elected by the people of Northern Ireland.²⁶⁵ Because of these relationships, many people view the police as an “instrument of British government policy rather than a service meeting local priorities.”²⁶⁶

The Police Authority may require reports about police activity from the Chief Constable when it believes the report would be in the public interest, but doubt exists as to whether this obligation includes reporting on operational matters.²⁶⁷ Under the Police (Northern Ireland) Act 1998, if the Chief Constable does not believe a report is in the public interest or necessary to the functioning of the Police Authority, he or she may request that the Authority look to the Secretary of State for a decision on whether the report should be produced.²⁶⁸ The Authority also has no powers of inquiry and thus cannot follow up on a report that is issued.²⁶⁹

Limitations on the powers of the Police Authority and the public’s perceptions of the Authority further limit its effectiveness and weaken its democratic accountability.²⁷⁰ The Secretary of State has significant power over the Authority, for she or he may set objectives that must be considered, the Police Authority and Chief Constable must consult her or him during planning, and she or he can direct the Chief

police excesses or introduce progressive policing policies.” Dickson, *The Police Authority*, *supra* note 260, at 279.

262. Policing Report, *supra* note 21, ¶ 5.6.

263. *See id.*

264. *See id.* ¶ 5.7.

265. *See id.*

266. *Id.* ¶ 5.9. Many feel that the outbreak of the Troubles was largely due to the fact that, prior to 1969, the RUC was under the direction of the former Unionist government. Separation between police and state is therefore a key issue in establishing accountability. *See id.*

267. *See id.* ¶ 5.10. Generally, this power has rarely, if ever, been exercised. *See* Dickson, *The Legal System*, *supra* note 31, at 254. The Police Authority is not meant to interfere with the way the police perform their jobs, because the Chief Constable has sole responsibility for operational matters and directs and controls the force. However, the term “operational matters” is ill-defined, so it is difficult to say on what matters the police should report. *See id.* at 254; *infra* notes 296-99 and accompanying text for a discussion of the term “operational independence.”

268. *See* Policing Report, *supra* note 21, ¶ 5.10.

269. *See id.*

270. *See id.* ¶¶ 5.11, 5.12.

Constable over the head of the Police Authority.²⁷¹ Additionally, people perceive the Police Authority to be pro-police, as evidenced by its quick defense of allegations of police wrongdoing before they have been properly investigated.²⁷² Recent attempts have been made to separate the functions of the Police Authority and the police force,²⁷³ but in the words of the Policing Commission, "the relationship between the two bodies is still in some respects that between executive collaborators rather than one between a service provider and a regulator."²⁷⁴

For members of the public to gain confidence in their police force, they need to know what the police are doing and why. Past arrangements have not made police activities transparent because the Police Authority does not meet in public and some of the names of its members are not even publicly available.²⁷⁵ Although many local Community and Police Liaison Committees exist, the public does not typically see senior officers reporting and answering the public's questions.²⁷⁶ The police themselves view this as a problem of public relations, but their response to inquiries is defensive.²⁷⁷ The Policing Commission argues that the police must instead expand communications with the media and willingly provide the public with information about their work to create a feeling of openness and transparency.²⁷⁸

The police force, like all citizens, must act within the bounds of the law at all times. To facilitate legal accountability, the Commission believes that police should know the law and their powers under it, be monitored and punished for any abuses, and that the public should see this process of accountability occurring.²⁷⁹ Procedures that secure compliance with the law and international human rights standards, and an effective complaints system, will instill confidence in the public as well as protect officers from malicious complaints.²⁸⁰ The Commission has "no doubt" that some RUC officers in the past have

271. *See id.* ¶ 5.11.

272. *See id.* ¶ 5.12.

273. Under the Police (Northern Ireland) Act 1998, the Chief Constable, rather than the Police Authority, is now responsible for civilian staff. Under the old regime, the Authority had to provide executive services to the police while managing the civilian staff, which made the Authority part of the police service while tasked with monitoring and holding it to account. *See id.* ¶ 5.13.

274. *Id.*

275. *See id.* ¶ 5.15.

276. *See id.* The Policing Commission found, in fact, that the community is not aware of the Authority and its work, and there does not appear to be a mechanism for holding the police publicly accountable. *See id.*

277. *See id.* ¶ 5.16. The Policing Commission states that the "prevailing instinct" of the police was "defensive, reactive and cautious in response to questions [about their work], as we experienced ourselves in relation to some of our own inquiries." *Id.*

278. *See id.*

279. *See id.* ¶ 5.17.

280. *See id.*

abused their positions and should be dealt with accordingly.²⁸¹ Therefore, to create public confidence, a complaints system should be set up at the local level that can deal with complaints quickly, effectively, and informally.²⁸²

To foster both democratic and legal accountability, and to increase the transparency of police actions, the Commission recommends that the existing Police Authority be replaced by a Policing Board, which would hold the Chief Constable and the police service publicly to account.²⁸³ While the Secretary of State would be responsible for setting long-term governmental objectives, the Board should also set objectives for a three- to five-year period and adopt a strategy prepared by the Chief Constable for implementation,²⁸⁴ including an Annual Policing Plan²⁸⁵ and an annual policing budget.²⁸⁶ The Board would also have responsibility for monitoring police performance under these plans.²⁸⁷

The proposed Board could request that the Chief Constable retire, and the Secretary of State could require the Board to retire the Chief Constable, subject to consultation with the Board.²⁸⁸ The Northern Ireland minister would also have the power to call for the Chief Constable's retirement, subject to the agreement of the Policing Board and the Secretary of State.²⁸⁹ Overall, the Policing Board would act as the disciplinary authority for chief officers and civilian equivalents.²⁹⁰ As a result, the Board's authority over the police would be clarified and would potentially increase the public's belief in its effectiveness in holding the police accountable.

The Policing Commission believes that to ensure credibility, a majority of the Policing Board's members should be elected.²⁹¹ Therefore, it recommends that the Board have nineteen members. Ten would be Assembly members drawn from the new Northern Ireland Executive, who do not hold ministerial offices in the

281. *Id.* ¶ 5.19.

282. *See id.* ¶ 5.20. The Commission also argues that the Chief Constable, who is in charge of spending money, should be principally accountable for how it is spent. At present, the Chief Constable is not designated as an accounting officer. *See id.* ¶ 5.24.

283. *See id.* ¶¶ 6.2, 6.3.

284. *See id.* ¶ 6.5. To simplify the roles of the Secretary of State, Police Authority, and Chief Constable in planning and setting objectives, the Commission advocates that the Secretary of State set long-term governmental objectives, the Policing Board set medium-term objectives, and the police set short-term plans for delivery of those objectives. *See id.* ¶ 6.4.

285. *See id.* ¶ 6.6.

286. *See id.* ¶ 6.7.

287. Specifically, the Board would monitor crime trends, police performance in public order situations, recruitment patterns, training, and complaints against the police. *See id.* ¶ 6.8.

288. *See id.* ¶ 6.9.

289. *See id.*

290. *See id.*

291. *See id.* ¶ 6.11.

Executive.²⁹² The other nine would be independent members selected from various fields—business, trade unions, voluntary organizations, community groups, and the legal profession.²⁹³ Here, the Commission's objective is to create a Board that accurately reflects the demographics of society, for it believes that "[n]either government nor the police could easily disregard the views of a Board which has its own democratic credentials."²⁹⁴ The nine independent members would further "command respect" for the Board by bringing relevant expertise with them.²⁹⁵

Presently, if the Chief Constable believes a particular matter is operational, the Police Authority cannot pursue it because it is a matter of "operational independence." This term is not defined in any legislation. Advocates of operational independence argue that the Chief Constable should make decisions solely on matters about which only he or she has all the facts and expertise, and that independence minimizes political influence.²⁹⁶ However, the police must be scrutinized in light of the powers they are given under the emergency laws.²⁹⁷ The Commission therefore suggests the term "operational responsibility" as a substitute, meaning that the Chief Constable should make operational decisions, but that his or her conduct should be open to inquiry or review.²⁹⁸ The Policing Board could require the Chief Constable to report on his or her functions, including those related to operational decisions. If the Chief Constable believes this reporting to be inappropriate, the question ultimately would be referred to the Secretary of State.²⁹⁹ Additionally, the Policing Board could initiate an inquiry into police conduct, and would have the power to ask another agency to conduct an inquiry, a power which the Police Authority presently does not have.³⁰⁰

Although Community and Police Liaison Committees (CPLCs)

292. *See id.*

293. *See id.* ¶ 6.12. The Secretary of State would appoint these members after consulting with the First Minister and Deputy First Minister. When responsibility for policing is devolved, the First Minister and Deputy First Minister acting together would make the appointments. *See id.* ¶ 6.13.

294. *Id.* ¶ 6.12.

295. *Id.*

296. *See id.* ¶ 6.20.

297. *See id.*

298. *Id.* ¶ 6.21.

299. *See id.* ¶ 6.22. The Chief Constable might question the requirement to report on matters involving national security, sensitive personnel matters, or cases before the courts. *See id.*

300. Examples of these agencies are the Police Ombudsman, the Inspectorate of Constabulary, the Audit Office, the Board's own staff, or private consultants. *See id.* ¶ 6.23. All members of the police service would be required to cooperate with the inquiry. *See id.*; *see also infra* text accompanying notes 310-13 for a description of the Ombudsman.

currently exist, most citizens do not use them to voice their views.³⁰¹ To increase dialogue between the police and the community, the Commission recommends that each District Council set up a District Policing Partnership Board (DPPB).³⁰² The community would elect the majority of its DPPB members, and the remaining independent members would be selected by the Council with the agreement of the Policing Board.³⁰³ At monthly meetings between the DPPB and the District Commander, police would present reports, answer questions, and respond to community concerns.³⁰⁴ The Policing Board would consider the views of the DPPBs in forming policing plans and strategies,³⁰⁵ and the DPPB would submit an annual published report to the District Council.³⁰⁶ To promote transparency, the Commission recommends that the Policing Board meet in public once a month to receive a report from the Chief Constable,³⁰⁷ that the DPPBs meet publicly once a month to ask questions of the Board and the police,³⁰⁸ and that police practices should be made available for public scrutiny unless it is in the public interest (rather than the police's interest) to withhold the information.³⁰⁹

In 1997, Dr. Maurice Hayes recommended the creation of an independent Police Ombudsman with an independent team of investigators to review police complaints, a proposal which was passed into law in 1998.³¹⁰ The Commission recommends that the Police Ombudsman become a significant institution in Northern Ireland and urges that enough money be provided to conduct large-scale investigations.³¹¹ The Ombudsman should be able to initiate inquiries without a specific complaint, gather data on trends in complaints, and coordinate with the police to address issues raised in the complaints.³¹² Additionally, the Ombudsman could investigate and comment on police policies and practices and bring problems to the attention of the Chief Constable and Policing Board.³¹³

301. See Policing Report, *supra* note 21, ¶ 6.25. Twenty-nine percent of respondents in the Commission's public attitudes survey knew that CPLCs exist, but 40% of those did not know what the CPLCs actually do. See *id.*

302. See *id.* ¶ 6.26.

303. See *id.*

304. See *id.* ¶ 6.30.

305. See *id.*

306. See *id.* ¶ 6.31. The Commission proposes funding for the DPPBs in paragraphs 6.32 and 6.33.

307. See *id.* ¶ 6.36.

308. See *id.* ¶ 6.37.

309. See *id.* ¶ 6.38. Specifically, police codes of practice and legal and ethical guidelines governing police work should be made public, including covert aspects such as surveillance and the handling of informants. See *id.* Additionally, clearly drafted notes on matters of public interest should be readily available. See *id.*

310. See *id.* ¶ 6.40.

311. See *id.*

312. See *id.*

313. See *id.* ¶ 6.41.

The Ombudsman provides the Board with another, more specialized mechanism of inquiry into police behavior. Without these mechanisms, the Board would be solely dependent on the Chief Constable's reports, and would be powerless unless it was prepared to call for the Chief Constable's retirement.³¹⁴ With the establishment of the Ombudsman, the Board could either initiate an inquiry itself or utilize this alternate mechanism.³¹⁵ These heightened and varied powers of inquiry would potentially aid in increasing the overall accountability of the police service.

3. Community Policing in a Peaceful Society

The security situation in Northern Ireland has recently improved. Since the ceasefires, it is unusual to see army escorts and rifle-carrying police officers.³¹⁶ To this end, the Commission recommends some progressive changes to be implemented as the situation continues to improve. For instance, newly built police stations should appear as ordinary buildings rather than fortresses,³¹⁷ and should be made more welcoming to the public and the workers within.³¹⁸ Land rovers should be used only in threatening situations,³¹⁹ and the army should continue to withdraw support as the security situation improves so that police are left to patrol on their own.³²⁰

Regarding the emergency powers, the Commission recommends that legislation be the same in Northern Ireland as it is in the rest of the United Kingdom,³²¹ and that records be kept that immediately

314. *See id.* ¶ 6.23. The Commission states, "[t]o be truly effective an institution needs to have more than just one, extreme power which by its nature is difficult to use." *Id.*

315. *See id.*

316. *See* Bar Report, *supra* note 28, at 6.

317. *See* Policing Report, *supra* note 21, ¶ 8.5.

318. *See id.* ¶ 8.6. For instance, the Commission suggests that the public reception areas be made more welcoming and that civilian receptionists replace police officers. *See id.*

319. *See id.* ¶ 8.8.

320. *See id.* ¶ 8.11. The Commission dedicates a separate section to public order policing, in which it recommends that the police should have the capacity to address public order emergencies without the help of other services, and with only the present level of support from the army. *See id.* ¶ 9.6. They further recommend coordination between the police and organizers of parades, and marshal training for such events. *See id.* ¶¶ 9.9, 9.10. Instead of calling for a repeal of plastic bullets, the Commission suggests that research be conducted to find alternatives, and that the police have a range of options for public order equipment to decrease reliance on plastic bullets. *See id.* ¶¶ 9.15, 9.16. The Commission presents specific rules to be followed for the deployment of plastic bullets, such as videotaping incidents, whenever possible, in which the use of such plastic bullets is authorized. *See id.* ¶ 9.17. Officers' numbers should be clearly presented on their uniforms and protective clothing, and the Policing Board and Ombudsman should monitor police performance in public order situations, with the power to seek and follow up on reports. *See id.* ¶¶ 9.18, 9.19.

321. *See supra* Part I.A.2. for a discussion of Northern Ireland's emergency laws. Currently, the EPA applies only to Northern Ireland. *See supra* note 39 and

document all actions taken under the emergency powers, including stops and searches.³²² If the threat of terrorism continues to require special legislation, the Commission agrees with the British government that these laws should be reviewed annually.³²³

The Commission further recommends closing the holding centers at Gough Barracks and Strand Road because the Commissioner for Holding Centres has advised the Policing Commission that no reason currently exists for holding detainees in separate centers from those detained under PACE.³²⁴ Presently, the PACE custody suites have audio recording, but the Commission suggests that they should have video recording as well.³²⁵ The Policing Board would have responsibility for inspecting the custody and interrogation suites, while lay visitors could not only inspect the conditions of detention but also observe interviews on camera with the detainee's consent.³²⁶ Complaints about treatment would go to the Ombudsman.³²⁷

4. Management, Size, and Structure of the Service

The changes recommended in the Report cannot occur without a commitment by police management. Therefore, the Commission believes that specialists in change management, who may be either civilians or police officers, should become part of the Northern Ireland police leadership team.³²⁸ The leadership team would develop and present a program for organizational changes to the Policing Board.³²⁹ To allow these change managers to function, district commanders would have authority over personnel in their command, budgets, and financing of local policing initiatives.³³⁰

In its study, the Commission found that many officers did not know what was expected of them in performing their jobs, indicating that management had failed to outline what good performance entails.³³¹ The Commission therefore concludes that management's prime responsibility is to ensure that the appraisal process is effective, and that an officer's ability to change should be a factor in the officer promotion and selection process.³³² In addition, an automated trend identification system would assist in tracking complaints, and police

accompanying text.

322. See Policing Report, *supra* note 21, ¶ 8.14.

323. See *id.*; *supra* note 42.

324. See Policing Report, *supra* note 21, ¶ 8.15. All detainees in the future would be detained in custody suites based in police stations. See *id.*

325. See *id.* ¶ 8.16.

326. See *id.*

327. See *id.*

328. See *id.* ¶ 10.3.

329. See *id.*

330. See *id.* ¶ 10.7.

331. See *id.* ¶ 10.9.

332. See *id.* ¶ 10.10.

managers would conduct random checks on their officers' ability to deal effectively with the public.³³³ The Commission recommends that management use all of its resources to ensure that professional and ethical standards are met.³³⁴ It also advocates civilianization of the force, particularly in the areas of personnel, finance, and administration.³³⁵ The goal of placing highly-qualified civilians in jobs that do not require police powers or training is to improve efficiency, bring forth a broader range of expertise, and develop a more open police culture.³³⁶

The Policing Commission found the current structure of the police service to be unnecessarily complicated, driven primarily by the response to security threats.³³⁷ It therefore makes several recommendations for restructuring and simplifying the service,³³⁸ which include merging the Special Branch and the Crime Branch.³³⁹ These branches would be brought together under the command of a single Assistant Chief Constable, and fewer officers would work in this command to eliminate the possibility of a "force within a force."³⁴⁰ Additionally, the future police service would not have a Full Time Reserve,³⁴¹ and the Part Time Reserve would be expanded to 2500 officers with the new recruits coming from underrepresented areas.³⁴²

With 13,000 officers, the RUC is a huge police service for a population of 1.675 million people³⁴³ and as such, it should be substantially reduced to about 7500 officers over the next ten years.³⁴⁴ Keeping certain assumptions in mind,³⁴⁵ the Commission recommends

333. *See id.* ¶¶ 10.12, 10.14.

334. *See id.* ¶ 10.15.

335. *See id.* ¶ 10.22.

336. *See id.* ¶¶ 10.22, 10.23.

337. *See id.* ¶ 12.3. The Special Branch, headed by its own Assistant Chief Constable, is composed of more than one tenth of all RUC officers, with its own support services, including an aircraft. *See id.* ¶ 12.2.

338. *See generally id.* ch. 12 (discussing structural changes in the organization of the police service).

339. *See id.* ¶ 12.12 (recommending that the Special Branch and Crime Branch "be brought together under the command of a single Assistant Chief Constable"). The Special Branch deals with undercover anti-terrorist work. *See Dickson, The Legal System, supra* note 31, at 26.

340. Policing Report, *supra* note 21, ¶¶ 12.11-12.13.

341. The Full Time Reserve resulted from the security situation in the last 30 years, and it consists of 2900 officers who work with three-year contracts to support the ordinary police service with security-related work. They carry out the same duties as the RUC and experience the same amount of risk. *See id.* ¶ 12.17.

342. *See id.* ¶ 12.18. Currently, there are 1300 officers in the Part Time Reserve. *See id.* ¶ 12.17.

343. *See id.* ¶ 13.1.

344. *See id.* ¶ 13.9.

345. In proposing a model for change, the Commission makes a number of assumptions, including that normal retirement is at 50 years of age (management can decline early retirement if the officer's skills are still needed), that about 80% of officers will retire, and that about 800 officers under age 50 with more than five years of experience may opt to take an early retirement package. *See id.* ¶ 13.11.

that severance packages include generous payments for early retiring officers.³⁴⁶ Further recommendations include a Training and Employment Agency to assist retiring officers who are seeking new jobs,³⁴⁷ that recruiting agencies in Great Britain consider the experience of RUC reservists in their applications,³⁴⁸ and that the British government should allow former reservists to participate in United Nations peacekeeping operations.³⁴⁹

5. Composition, Recruitment, Training, and Culture

The RUC is hardly representative of the population in Northern Ireland. The Commission states that "real community policing is impossible if the composition of the police service bears little relationship to the composition of the community as a whole."³⁵⁰ The community in its entirety will have a stake in the police force if they "see the police as their police," which will in turn facilitate more effective policing by solidifying a partnership between the citizenry and the police.³⁵¹ To this end, the Commission suggests recruiting more Catholics/nationalists, women, homosexuals, and other underrepresented classes of people to facilitate cooperation between community members and the service.³⁵² Specifically, the Commission presents a model to recruit 50% Catholic and 50% Protestant officers over a period of ten years.³⁵³ The Policing Board, NIO Police Division, and the office of the Police Ombudsman should also represent the population of Northern Ireland, and every effort should be made to ensure that this occurs.³⁵⁴

Some applicants to the police service have been discouraged or intimidated by their communities from applying because of the identification of the force with unionism.³⁵⁵ The Commission recommends that community leaders encourage their youth to apply for the force,³⁵⁶ that connections be formed between police, schools,

346. *See id.* ¶ 13.12. The chart in box 9 of the Report shows the Commission's plan for the changing size of the police service over the next ten years. The chart in box 10 displays a model of the proportions of current officers to officers recruited over the ten-year period, and the chart in box 11 shows how much the ten-year plan could cost. *See id.* ¶¶ 13.15, 13.16.

347. *See id.* ¶ 13.17.

348. *See id.* ¶ 13.19.

349. *See id.* ¶ 13.20.

350. *Id.* ¶ 14.2.

351. *Id.* ¶ 14.3.

352. *See id.* ¶¶ 14.4-14.9.

353. *See id.* ¶ 14.9.

354. *See id.* ¶ 14.17.

355. *See id.* ¶ 15.1.

356. *See id.* ¶ 15.2. "Community leaders" include political party leaders, local councillors, bishops, priests, schoolteachers, and sports authorities. Furthermore, it calls on the Gaelic Athletic Association to change its rule prohibiting police from being members. *See id.*

and universities,³⁵⁷ and that pilot-cadet schemes be established in particularly underrepresented areas.³⁵⁸

Changing the composition of the senior ranks of the police service presents the problem of encouraging more Catholics to apply for senior positions.³⁵⁹ The Commission recommends that the recruiting agency identify Catholic officers serving outside of Northern Ireland and encourage them to apply in Northern Ireland,³⁶⁰ as well as encourage lateral entry of experienced officers or recruits from non-police organizations.³⁶¹

Currently, officers receive little or no training in furtherance of the objectives that drive the service. For example, many officers in the survey indicated that they received little training in community awareness or human rights.³⁶² Because there is presently no budget for training, the Commission recommends that a comprehensive budget be established,³⁶³ and that a police college be built to accommodate training facilities.³⁶⁴ Civilians should be incorporated into the training process as instructors, and the training exercises should be conducted on university premises, ideally with non-police students.³⁶⁵ Currently, the RUC spends almost twice as much time on drill training than other United Kingdom police services do, so that the hours spent on drill would be significantly reduced to incorporate human rights training.³⁶⁶

Those officers already in service must be retrained to understand the impact of the new constitutional system in Northern Ireland, new policing arrangements, and the new procedures of the criminal justice system. Each officer should take a course for this purpose,³⁶⁷ and receive instruction discussing the implications for policing of the Human Rights Act 1998, as well as the European Convention on Human Rights and the Universal Declaration of Human Rights.³⁶⁸ Managers should also undergo management training with at least one course in a non-police environment.³⁶⁹ Management workshops

357. *See id.* ¶ 15.4.

358. *See id.* ¶ 15.6. The Commission also makes suggestions for broad advertising in both the United Kingdom and the Republic. *See id.* ¶ 15.8. Flexible working arrangements are also recommended, as well as a short recruiting process of six months so that interested parties have less time to withdraw due to peer pressure, second thoughts, or impatience. *See id.* ¶ 15.12.

359. *See id.* ¶ 15.17.

360. *See id.*

361. *See id.* ¶ 15.18.

362. *See id.* ¶ 16.3.

363. *See id.* ¶ 16.5.

364. *See id.* ¶ 16.6.

365. *See id.* ¶ 16.10.

366. *See id.* ¶ 16.14.

367. *See id.* ¶ 16.20.

368. *See id.* ¶ 16.21; *supra* notes 250-55 and accompanying text.

369. *See* Policing Report, *supra* note 21, ¶ 16.22.

should discuss changes in police organization,³⁷⁰ and all officers should participate in a neighborhood-policing training program.³⁷¹

To encourage transparency, the Commission suggests that the training curricula be publicly available.³⁷² The public would also be able to attend some training sessions.³⁷³ The Report indicates that some United States police departments run "citizens academies," which provide public courses to demonstrate police procedures, explain the legal context in which police operate and the constraints they operate under, and to show how a citizen can be involved in policing.³⁷⁴ Following these models, the Commission suggests that the new police college offer a pilot citizens program to gauge interest.³⁷⁵

The name and symbols of the RUC have become particularly politicized, and many nationalists and republicans associate them with the British state. This creates a problem because many of the people of Northern Ireland do not view the police service as their own.³⁷⁶ To achieve the goal of community policing, the Commission feels that people must be able to identify with the symbols of the force.³⁷⁷ To this end, they recommend that the name of the RUC be changed to the neutral Northern Ireland Police Service, that the RUC adopt a new badge and symbols that are not associated with either the British or the Irish states, that the Union flag not be flown from police buildings, and that a new flag be created that is not associated with either the British or the Irish state.³⁷⁸ Finally, all levels of management should be responsible for maintaining a neutral working environment.³⁷⁹

The Commission advocates cooperation with other police services, particularly the Garda Síochána in the Republic of Ireland,³⁸⁰ to promote effective policing in a country where much of the crime has a "cross-border dimension."³⁸¹ Written protocols by both services covering aspects of cooperation,³⁸² an annual conference between the two police services to discuss concerns,³⁸³ and personnel exchanges³⁸⁴ would further the goal of crime detection and prevention.³⁸⁵ The

370. *See id.*

371. *See id.* ¶ 16.24.

372. *See id.* ¶ 16.25.

373. *See id.* ¶ 16.26.

374. *Id.*

375. *See id.*

376. *See id.* ¶ 17.4.

377. *See id.* ¶ 17.6.

378. *See id.*

379. *See id.* ¶ 17.9.

380. The Garda Síochána is the name of the police force in the Republic of Ireland.

381. *Id.* ¶ 18.2.

382. *See id.* ¶ 18.7.

383. *See id.* ¶ 18.8.

384. *See id.* ¶ 18.10.

385. In addition, cooperation in training and joint disaster planning would help

RUC could also benefit from exchanges and cooperation with services elsewhere in the United Kingdom, and the Commission advocates exchanges with police services in Great Britain,³⁸⁶ joint training, and "structured links" to services in England, the Republic of Ireland, and Scotland.³⁸⁷ International training exchanges should also be developed, particularly in areas where Northern Ireland police need international police cooperation.³⁸⁸

With regard to implementation of its proposals, the Commission cautions against "cherry-picking," or implementing some elements and not others.³⁸⁹ A mechanism is also necessary to oversee these changes and to instill confidence in the community where the Commission's recommendations are being implemented.³⁹⁰ Following the example of the appointment of former Senator George Mitchell to facilitate the peace process,³⁹¹ an "eminent" person from outside of the United Kingdom or Northern Ireland should be appointed as an oversight commissioner to supervise the implementation of the recommendations.³⁹² The Policing Board and DPPBs would provide the commissioner with their objectives and report on their progress.³⁹³ The commissioner would then publicly report on the progress achieved, and discuss whether problems that emerge are the result of policing institutions or matters that are beyond their control.³⁹⁴ The oversight commissioner would be reappointed every five years.³⁹⁵

C. Reactions

Immediately following the publication of the Report in September,

further relationships between the two forces and promote sharing of expertise. The Commission also recommends the establishment of communications between the Garda and the Northern Ireland police through improved radio links, compatible informational technology systems, and joint databases in areas of cross-border crime. *See id.* ¶¶ 18.12, 18.14, 18.15.

386. *See id.* ¶ 18.16.

387. *Id.* ¶ 18.17.

388. *See id.* ¶ 18.18.

389. *Id.* ¶ 19.2.

390. *See id.* ¶ 19.3.

391. In 1995, President Clinton appointed Senator George Mitchell as Special Advisor to the President and Secretary of State to consider economic initiatives in Northern Ireland. The British and Irish governments then asked him to chair the International Commission on Disarmament in Northern Ireland. Senator Mitchell was formally appointed in June 1996 as chairman of the Northern Ireland peace talks, which ultimately resulted in the Agreement on April 10, 1999. Senator Mitchell received the Philadelphia Peace Prize and the Fordham-Stein Prize, and was nominated for the Nobel Peace Prize for his skill in negotiating the Agreement. *See* Michael A. Cooper, Introduction to the Alexis C. Coudert Memorial Lecture at the Association of the Bar of the City of New York (Dec. 10, 1998), in 54 *The Record of the Association of the Bar of the City of New York* 137, 143-44 (1999).

392. Policing Report, *supra* note 21, ¶ 19.4.

393. *See id.* ¶ 19.5.

394. *See id.*

395. *See id.* ¶ 19.6.

former Secretary of State Mo Mowlam praised the Commission for "chart[ing] the way forward for the best possible police service in Northern Ireland."³⁹⁶ She also indicated that there would be further consultation on the Report's 175 recommendations, and through a government consultation phone line, people from the community could voice responses to the Report.³⁹⁷ The target date for a full implementation plan was December of 1999, but all of the proposed changes cannot be made at once.³⁹⁸ While some changes can be made without implementing legislation, some require legislation in order to take effect, and others may take years to fully complete.³⁹⁹

The Report drew varied reactions from the community. David Trimble, leader of the Ulster Unionist Party and First Minister (Designate) of the Northern Ireland Assembly, called a number of changes "unnecessary," including the RUC name change.⁴⁰⁰ He argued that "alterations in names and symbols mean least to those who strongly oppose the RUC," and he does not view the symbols as political.⁴⁰¹ In addition, Trimble stated that the religious affiliation of the existing Catholic policemen and women in the RUC and the reserve provides "no evidence that their religion helps to diminish the opposition of paramilitaries."⁴⁰² Trimble attacked many proposals as "counter to common sense and common decency without any firm foundation or evidence."⁴⁰³ The Chief Constable welcomed the suggestions regarding implementation of human rights awareness, but stressed that diminishing the size of the force and merging the Special Branch and Crime Branch can occur only as the security situation allows.⁴⁰⁴

Human rights organizations were pleased with the commitment to human rights contained in the Report.⁴⁰⁵ However, they also expressed disappointment with the Report's failure to call for an immediate end to emergency legislation and the absence of a mechanism to ensure that the police officers who committed past

396. Northern Ireland Information Service, *Secretary of State's Statement on the Patten Report* (Sept. 9, 1999) <<http://www.nio.gov.uk/990909a-nio.htm>>.

397. *See id.*

398. *See id.*

399. *See id.*

400. *See* David Trimble, *No way to reward democracy's servants*, Sunday Times (London), Sept. 12, 1999, at 21, available in 1999 WL 27693265.

401. *Id.*

402. *Id.*

403. *Id.*

404. *See* RUC Press Release, Chief Constable's Initial Response to Patten Report (visited Mar. 27, 2000), available on <<http://www.ruc.police.uk/press/1999/sep/patton1.htm>> [hereinafter RUC, Chief Constable's Response].

405. *See, e.g.*, Committee on the Administration of Justice Press Release, CAJ Reaction to Patten Report, Sept. 9, 1999 (visited Mar. 27, 2000), available on <http://ourworld.compuserve.com/homepages/Comm_Admin_Justice/latestpressreleases.htm#September9> (acknowledging positive recommendations in Patten Report).

human rights abuses do not remain on the force.⁴⁰⁶ Furthermore, some commentators expressed disappointment that the Report failed entirely to address the issue of the intimidation of defense lawyers, and the Nelson and Finucane murders in particular.⁴⁰⁷

In addition, other commentators stressed that the key to the effectiveness of the Commission's proposals is implementation. For instance, the Policing Report is unclear on how much power the DPPBs will actually have, because the new Board need only "consider" the views of the DPPBs in policy formation and strategies.⁴⁰⁸ Without power to truly implement changes, the DPPBs are not likely to be more effective than the existing Community Police Liaison Committees.⁴⁰⁹ Issues regarding the timing of implementation will also be important. The Chief Constable indicated approval to move forward with those recommendations that are "not security dependent," but noted that others will be implemented as the security situation allows.⁴¹⁰ Depending on who makes these timing decisions, progress on the proposals could be slow and ultimately ineffective.

On January 19, 2000, Northern Ireland Secretary Peter Mandelson announced plans to propose a policing Bill in February to create the revamped service.⁴¹¹ The Bill, which will likely become law in the autumn of 2000, is in accord with the Policing Commission's proposals to change the name of the service and its composition.⁴¹² The Government plans to put the changes into effect within twenty months from January 2000.⁴¹³

406. See *id.*; see also Lawyers Committee for Human Rights Media Alert, Northern Ireland's Patten Report on Policing: Lawyers Committee for Human Rights Praises Constructive Recommendations, But Criticizes the Omission of Key Issues, Sept. 9, 1999 (visited Mar. 27, 2000), available on <<http://www.lchr.org/media/nir0999.htm>> [hereinafter Lawyers Committee for Human Rights, Patten Report] (noting that the Lawyers Committee expressed disappointment at Patten's neglect to call for an end to emergency legislation).

407. See Lawyers Committee for Human Rights, Patten Report, *supra* note 406; see also Julia Hall, Northern Ireland: A New Beginning to Policing? (Human Rights Watch, New York, New York), Nov. 1999, vol. 11, no. 15(D), at 11 (stating that "[i]t is striking . . . that the commission's final report does not make recommendations regarding defense lawyer intimidation"); Representative Chris Smith, Statement before the Subcommittee on International Operations and Human Rights at House of Representatives 2 (Sept. 24, 1999) (on file with *Fordham Law Review*) (stating that "the report fails to make recommendations that would curb the harassment of defense attorneys and there is not a mention of the ongoing, still evolving implications of RUC-Special Branch complicity in the Finucane murder").

408. See Policing Report, *supra* note 21, ¶ 6.30; Maggie Beirne, *Patten's Programme for Policing*, Just News (Bull. Comm. on Admin. of Just., Belfast, Northern Ireland), Sept. 1999, vol. 15, no. 9, at 1, 4.

409. See Beirne, *supra* note 408, at 4.

410. See RUC, Chief Constable's Response, *supra* note 404.

411. See Frank Millar, *Mandelson to Table Bill Next Month on New Police Service*, Irish Times, Jan. 20, 2000, at 1.

412. See *id.*

413. See Warren Hoge, *Britain to Shrink the Ulster Constabulary and Broaden its Ranks*, N.Y. Times, Jan. 20, 2000, at A5.

Through its recommendations, the Policing Commission made a significant stride toward changing the police service in Northern Ireland to better serve its citizens. Overall, these institutional changes may result in attitudinal changes and potentially foster a stronger relationship between the police and the community as a whole. However, the Report left some gaps that must be further scrutinized before the Agreement's democratic and peaceful goals can be truly achieved, specifically with regard to the situation of defense lawyers. The next part argues that although the Policing Commission's proposals may indirectly help to alleviate the problem of intimidation of defense lawyers, they do not go far enough to completely eradicate the problem. Part III asserts that the Policing Commission should have directly addressed the issues of lawyer intimidation, human rights abusers who remain on the force, and the repeal of emergency legislation.

III. GAPS IN THE REPORT: THE CONTINUING PLIGHT OF DEFENSE ATTORNEYS

This part applies the recommendations of the Policing Commission to the problems facing defense lawyers in Northern Ireland and considers whether those suggestions will truly alleviate problems of intimidation and harassment. Lawyers currently operate in an environment in which they regularly experience threats and interference with the attorney-client relationship and the right to counsel of choice. Evidence suggests that the police are key figures in administering these types of abuses. Along with the Policing Commission's recommendations comes the opportunity for significant changes in policing in Northern Ireland, which could in turn abate future abuses of defense lawyers. The Policing Report contains many recommendations that, if implemented, may help defense lawyers facing harassment and police interference in Northern Ireland. The focus given to implementing human rights norms throughout the force,⁴¹⁴ the mechanisms suggested to increase police accountability,⁴¹⁵ and the potential change in police composition to make the force more representative of the community⁴¹⁶ could create an environment in which attorneys are better able to do their jobs effectively and safely. But the recommendations do not go far enough toward combatting the problem of solicitor threats and intimidation. The Commission should have recommended a mechanism to remove past human rights offenders from the force, called for a repeal of emergency legislation, and specifically addressed the problem of the intimidation of defense lawyers in its provisions.

414. *See supra* Part II.B.1.

415. *See supra* Part II.B.2.

416. *See supra* Part II.B.4.

A. *Implementation May Alleviate the Abuses*

The Commission argued in its Report that a human rights program would ensure respect for human rights both technically and behaviorally if police know the laws well, master skills, and as a result instinctually learn to respect individual rights.⁴¹⁷ In furtherance of this program, the Commission made specific recommendations regarding the incorporation of human rights into codes of ethics and practice, police training, and appraisals.⁴¹⁸ All of these proposals could improve the situation of defense lawyers.

The new Code of Ethics and Code of Practice proposed by the Commission would integrate the European Convention on Human Rights into police practice.⁴¹⁹ Under the model recommended by the Commission, a police officer would take an oath to uphold fundamental human rights and display respect and compassion toward every individual.⁴²⁰ These codes, if implemented, clearly attempt to bring a human rights mentality to the police force. Evidence of defense attorney intimidation suggests that some police officers, to this point, have not treated lawyers with respect or compassion.⁴²¹ Requiring both new and existing officers to take the oath brings their duty to treat lawyers respectfully to the fore, and could create an awareness in the police force that did not previously exist. Presumably, the Policing Commission emphasizes human rights in the police oath so that officers will take the idea of respecting individual rights seriously. In taking the oath, officers would be formally asserting their willingness to respect human rights. Elevating the status of human rights in this way could inspire officers who do not wish to violate a formal commitment to refrain from participating in abuses.

The new training scheme may also reduce the harassment of defense lawyers by training new officers and retraining existing officers in the principles of the Human Rights Act 1998, the European Convention on Human Rights, and the Universal Declaration of Human Rights.⁴²² By reducing the hours spent on drills and replacing them with human rights training, officers' attention will again be drawn to the importance of respect for human rights in effective policing. Furthermore, this training is aimed at providing practical skills rather than simply stating goals, so that officers would immediately be able to recognize the effects of their actions in a true

417. See *supra* notes 248-55 and accompanying text.

418. See *supra* notes 252-57 and accompanying text.

419. See *supra* notes 252-54 and accompanying text.

420. See Policing Report, *supra* note 21, at Annex 5. The model code would be the draft code produced by the Association of Chief Police Officers (ACPO) in 1992, updated to take the Human Rights Act 1998 into account.

421. See *supra* notes 102-19 and accompanying text.

422. See *supra* notes 250-54, 368 and accompanying text.

policing situation.⁴²³

Using awareness of human rights issues as an important element in the appraisal of police behavior⁴²⁴ further suggests to police officers themselves the need to take human rights seriously. If officers know that their awareness of human rights in executing their jobs will be reviewed by a superior, presumably their adherence to human rights standards will improve. Moreover, under the new scheme, officers would be aware that adherence to human rights standards is a crucial part of their jobs and as such, would potentially be less inclined to engage in human rights violations against defense attorneys than they have in the past. Additionally, officers will have further incentive to respect human rights if the Policing Board is closely monitoring their behavior, as recommended by the Commission.⁴²⁵ The Commission's recommendations thus provide a promising start for increasing accountability and transparency through the establishment of the Policing Board and an effective complaints system. The overall emphasis placed on human rights in the proposed policing scheme marks awareness of civil liberties as a topic of utmost importance and heightens individual awareness.

If the Commission's recommendations regarding the Policing Board are put into effect, the Board will have authority not only to propose plans and monitor police compliance, but also to act as a disciplinary authority.⁴²⁶ As a result, officers may be less inclined to harass lawyers for fear they will be held accountable to the Board, which could then initiate an inquiry into their conduct or ask another agency, such as the Ombudsman, to do so.⁴²⁷ If the public is able to hold the police accountable for abuses of authority, it would seem that much of the battle for protection against the intimidation of lawyers would be won. Arguably, officers would stop engaging in activity that poses a personal threat to their careers. Additionally, the Board could require the Chief Constable to report on actions that include operational decisions.⁴²⁸ Presently, the police operate in an environment where they are effectively free to operate at will without negative repercussions, for there exists no effective monitoring mechanism. The establishment of the Policing Board could change this, and therefore improve the situation for defense lawyers through increased accountability and redress of complaints.

By proposing that the Police Ombudsman be a significant institution in Northern Ireland, the Commission provides another

423. *See supra* note 254 and accompanying text.

424. *See supra* note 255 and accompanying text.

425. *See supra* notes 257, 300 and accompanying text.

426. *See supra* notes 288-90 and accompanying text (stating that the Board could request the Chief Constable's retirement).

427. *See supra* note 300 and accompanying text.

428. *See supra* notes 296-99 and accompanying text.

potential safeguard for defense lawyers.⁴²⁹ Having an Ombudsman with sufficient funding who could initiate inquiries without a specific complaint, gather data on trends in complaints, and instigate large-scale investigations may give lawyers much more confidence in the system.⁴³⁰ Already, a great deal of information has been gathered suggesting that the harassment of defense lawyers is a persistent problem in Northern Ireland, and this has been confirmed by the United Nations Special Rapporteur on the Independence of Judges and Lawyers.⁴³¹ With the Ombudsman and the Policing Board in place, lawyers would have an independent forum in which to voice their concerns without the fear that they would not be heard. These mechanisms could prevent future tragedies like those of Patrick Finucane and Rosemary Nelson.

The proposed Policing Board is significantly different from the existing Police Authority so as to not duplicate the same problems.⁴³² The more representative composition of the proposed majority-elected Board⁴³³ could help to alleviate fears that the Board would consistently side with the police. Additionally, through public meetings, the Board would be open to questions from the public which would promote the transparency of its actions, and would consider the views of the DPPBs in creating its plans and policies.⁴³⁴

Many of these recommendations are aimed at providing a police service that is more attuned to the views of the community.⁴³⁵ As the security situation in Northern Ireland improves, the Commission has recommended changes that will make the police less intimidating to the community as safeguards are no longer needed.⁴³⁶ Recommendations such as closing the holding centers at Gough Barracks and Strand Road could improve the situation for lawyers because these facilities are often the sites of threats and harassment.⁴³⁷ Furthermore, inspection of and audio/video recording in PACE suites would be a further disincentive to police to threaten either clients or

429. See *supra* notes 310-13 and accompanying text.

430. See *supra* notes 312-13 and accompanying text.

431. See *supra* notes 184-91 and accompanying text.

432. Currently, the Police Authority has problems with accountability and has a membership unrepresentative of the community. See *supra* notes 260-61 and accompanying text. Its powers are also limited, and the community perceives it to be allied with the police force rather than impartial. See *supra* notes 270-74 and accompanying text.

433. See *supra* notes 291-95 and accompanying text.

434. See *supra* notes 301-09 and accompanying text.

435. For example, the DPPBs provide a forum for voicing concerns publicly, and requiring police to report publicly allows the community to know what the police are doing.

436. See *supra* notes 317-20 and accompanying text.

437. See *supra* notes 103, 324 and accompanying text. The center at Castlereagh was recently closed.

their lawyers, for such threats could be documented and observed.⁴³⁸

To depoliticize policing in Northern Ireland, the composition of the police should be highly representative of the community. In cases in which lawyers have been intimidated, police comments indicate that they have been targeted for what the police believe to be their political views.⁴³⁹ If the service were more representative, it would likely be viewed by the community as more neutral and therefore more fair. In addition, police officers from different backgrounds working together could educate one another about the varying views of Northern Ireland's citizens on the issue of policing, which may lead to greater cognizance of how officers can respect the rights of defense lawyers and their detainees. Once the focus of the force is on effective policing, rather than on politics, there should be a correlative decrease in police intimidation of lawyers.

Of course, the problem remains of encouraging underrepresented groups to apply to the police force, which is not likely to occur quickly. However, if the Commission's suggestions to diversify institutions such as the Policing Board are followed to make it more representative of the population,⁴⁴⁰ minorities may follow suit when making their application decisions. Additionally, underrepresented communities would then have greater reason to encourage applicants if they saw that changes were truly being made through these mechanisms.

Implementation of the Policing Commission's proposals will undoubtedly cause great changes in the functioning of the police force in Northern Ireland. The structural and philosophical adjustments may generate a mindset within the force that can positively alter the institutional context in which defense lawyers work. Diversification among police members and the creation of an effective Policing Board and complaints system will make the police more accountable and transparent to the community, and will increase scrutiny of the force, thereby lessening the likelihood of threats against lawyers. New and greater emphasis on human rights may also cause officers to take liberty violations more seriously, particularly when the aforementioned structural mechanisms exist to hold them accountable. These changes, although critical first steps, are not enough, however, because the Policing Commission failed to address issues crucial to eliminating the problems that confront defense lawyers.

438. See *supra* notes 325-27 and accompanying text.

439. See *supra* notes 5, 110, 119 and accompanying text.

440. See *supra* notes 291-95 and accompanying text.

B. *The Recommendations Will Not Completely Eradicate the Problem of Intimidation*

Although its recommendations are promising, the Policing Commission still could have gone further in alleviating the problems that defense lawyers face in Northern Ireland. The Report should have taken the opportunity to recommend a specific mechanism for removing past human rights offenders, called for a repeal of emergency legislation, and specifically addressed the problem of intimidation of defense lawyers.

In addressing the issue of past violations, the Commission presumably believes that its recommendations to change the composition of the police service will cause some past human rights offenders to leave the service.⁴⁴¹ Existing officers, meanwhile, will be retrained in the new policing practices and will take a new oath, such that those who cannot abide by the new terms will presumably leave the force either of their own free will or through termination for continued abuses.⁴⁴² Furthermore, under restructuring proposals, nearly half of the service would consist of new members within a short period of time.⁴⁴³

It is arguably unrealistic that those who have committed abuses in the past will be so easily removed or their behavior altered by taking a new oath or undergoing retraining. Furthermore, failure to formally create a mechanism to weed out the "bad apples" creates a disincentive for Catholics/nationalists to join the force when they know that those who engaged in abuses in the past without repercussions are probably still employed in the service. In addition, proposals for changing the composition of the force are aimed mostly at the entry levels, and therefore leave the higher ranks intact. Thus, the effect of the implemented changes may not be felt for years, since those in controlling positions were in control prior to the reform. These wrongdoers may never be held accountable, which perpetuates the lack of public confidence in the force and leaves defense attorneys open to intimidation by the very officers who have threatened them in the past. The Commission states that it was "not charged with a quasi-legal investigation of the past,"⁴⁴⁴ but that its "aim is to help

441. See Beirne, *supra* note 408, at 4-5.

442. See *id.*; *supra* notes 250-57 and accompanying text. The Commission's suggested text for the oath is:

I hereby do solemnly and sincerely and truly declare and affirm that I will faithfully discharge the duties of the office of constable, and that in so doing I will act with fairness, integrity, diligence and impartiality, uphold fundamental human rights and accord equal respect to all individuals and to their traditions and beliefs.

Policing Report, *supra* note 21, ¶ 4.7.

443. See Policing Report, *supra* note 21, ¶ 14.12.

444. *Id.* ¶ 1.6.

ensure that past tragedies are not repeated in the future.”⁴⁴⁵ However, the same officers who allegedly harassed Rosemary Nelson still remain on the force. The Commission, without conducting an “investigation,” could have at least assigned authority to an independent mechanism that would ensure that past abusers would not be retained on the force.⁴⁴⁶

Secondly, the Commission should have taken the opportunity to call for a repeal of the emergency legislation, which significantly contributes to the intimidation problem.⁴⁴⁷ Giving police such extensive and unreviewable powers under these laws creates an environment ripe for abuse. By allowing stops without reasonable suspicion, denying detainees access to solicitors, and giving tremendous weight to confessional evidence, both detainees and their solicitors are placed at the will of the police and the criminal justice system, which allows officers to engage in systematic coercion and intimidation.⁴⁴⁸ Although sporadic violence still exists in Northern Ireland, the country is arguably no longer in an emergency state and as such, does not need its emergency laws.⁴⁴⁹ With the passage of the Human Rights Act 1998, the Government placed more emphasis on the protection of human rights and recognized the need for a forum in which to challenge violations.⁴⁵⁰ The Commission itself devotes a great deal of space to human rights in its Report.⁴⁵¹ It is therefore inconsistent to fail to call for a repeal of the very laws that systematically deny the protection of these rights. Although the Criminal Justice Review may be able to propose changes that the Policing Commission overlooked, its proposals relate to criminal justice arrangements other than policing and emergency legislation.⁴⁵²

Increasingly, the international community is recognizing the special position that human rights defenders such as defense lawyers hold in society and the consequent need for their protection.⁴⁵³ The problem of the intimidation of defense lawyers is a pervasive one in Northern

445. *Id.* ¶ 1.7.

446. In fact, some commentators, prior to the Report’s publication, provided the Commission with recommendations for vetting officers who have engaged in human rights abuses from the force. See Hall, *supra* note 407, app. A, p. 17 (Briefing Paper for the Independent Commission on Policing for Northern Ireland, Jan. 16, 1999) (describing structure of a vetting unit independent of political influence that would conduct “a thorough background check that mines several legitimate sources of information . . . to determine whether or not a police officer has been involved in human rights abuses”).

447. See *supra* notes 39-86 and accompanying text.

448. See Lawyers Committee for Human Rights, *At the Crossroads*, *supra* note 58, at 117.

449. See *supra* notes 51-56 and accompanying text.

450. See *supra* notes 59-62 and accompanying text.

451. See Policing Report, *supra* note 21, at ch. 4; *supra* notes 244-57 and accompanying text.

452. See *supra* notes 215-16 and accompanying text.

453. See *supra* notes 165-91 and accompanying text.

Ireland, which evidence suggests is connected to police activities aimed at harassment and interference with the attorney-client relationship.⁴⁵⁴ By not referring to this problem at all, or to the Nelson and Finucane murders, the Policing Commission has failed to alert the Government to a particularly significant policing problem. Anticipating this criticism, the Commission states that it did not have judicial inquiry power, and that without investigative power or subpoena power it could not address the issues of independent inquiries into the Nelson and Finucane murders.⁴⁵⁵ Furthermore, as a forward-looking Commission, the Commission contends that it would have been wrong to address issues of investigating specific past abuses.⁴⁵⁶ However, the Commission did have the freedom to survey problems inherent in Northern Ireland's criminal justice system, and it was charged with the duty of reporting its findings to the Government.⁴⁵⁷ In addition to the fact of Nelson's and Finucane's murders, ongoing allegations of threats by police and the attention given by the international community to the problem of attorney intimidation in Northern Ireland indicate that abuse and harassment of defense solicitors is a pernicious and troubling aspect of the criminal justice system.⁴⁵⁸ Even though it did not wish to call for independent inquiries into Nelson's and Finucane's tragic deaths, the Commission had the authority and opportunity to highlight the issue of attorney intimidation in its report and to make specific recommendations. In neglecting this opportunity, the Commission perpetuates the lack of confidence in the police service and contributes to the ongoing problem of attorney intimidation in Northern Ireland.

CONCLUSION

Despite the recent positive changes in Northern Ireland's security situation, the intimidation and harassment of defense lawyers remains a problem, as evidenced by the continuing allegations of harassment made by defense lawyers and the recent murder of Rosemary Nelson. As human rights defenders, lawyers in Northern Ireland should be afforded protection to perform their jobs effectively and to represent the accused in a tense political climate. The Policing Commission made many recommendations for policing reform that may assist lawyers representing terrorist suspects, but neglected to make the problem of attorney intimidation an important part of its report or to make recommendations that will completely eliminate the problem. The Commission's proposals should be implemented soon to begin

454. See *supra* notes 102-19 and accompanying text.

455. See Policing Report, *supra* note 21, ¶ 1.6.

456. See *id.*

457. See *supra* note 212 and accompanying text.

458. See *supra* notes 102-43, 165-91 and accompanying text.

the process of policing reform. But before legislation is solidified, provisions should be added to remove past offenders from the force and to directly address the issue of attorney intimidation. At the same time, commentators should pick up where the Commission left off and call for a repeal of emergency legislation, thereby increasing international attention to the problem of intimidation and harassment of defense lawyers in Northern Ireland.

Notes & Observations